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INTERSTATE TRANSPORT AND DISPOSAL OF SOLID WASTE

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENVIRONMENTAL PROTECTION

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

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SECOND SESSION

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INTERSTATE TRANSPORT AND DISPOSAL OF SOLID WASTE

WEDNESDAY, JULY 18, 1990

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m. in room SD-406, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the subcommittee) presiding.

Present: Senators Baucus, Lautenberg, Metzenbaum, Lieberman, Durenberger, Chafee, Warner, and Moynihan.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. The hearing will come to order.

Today's hearing will focus on interstate transportation and disposal of solid wastes, specifically the role and responsibility of State and Federal governments with respect to interstate waste transportation.

Well down to its basic elements, the controversy results because more trash is being hauled over longer distances across more State lines. It is to say, long haul transport has become particularly a vexatious problem.

As the landfills of receiving communities fill up with out-of-state trash, local communities have decided to take matters into their own hands. They don't want somebody else's garbage in their back yard. They don't want their precious and inexpensive landfills sold to the highest bidder, so folks in States with surplus landfill capacity have declared war against exporting States.

About 200 years ago, we fought a similar war between the States. In 1794, we fought the war over the Federal whiskey tax. Today's war is not over whiskey taxes, but what to do with the empty whiskey bottles. Like the whiskey rebellion, today's war is pitting the Federal Government against the States. It is a war being fought over States' rights, the right of a State to protect its environment from trash from another State, and is also a controversy between States.

If we learned anything from the whiskey rebellion, we learned that we couldn't survive as one nation if each State acted independently from the other. As the New Hampshire Assembly put it at the time of the Whiskey Rebellion, "If every district so disposed may for themselves decide that they are not within the claim of the 13 States, we may soon have 1000 States all free and independent."

Well, the Union survived the Whiskey Rebellion. Today, the solid waste crisis challenges us to find ways to avoid 1000 States, all free and independent. To respond to this challenge, we must first understand the problem and by any measure, the problem is massive.

First, every year we generate some 160 million tons of trash—enough to fill a convoy of trash trucks 145,000 miles long. That is six times around the Earth. Unless we change our ways, by the year 2000, that convoy will be 30,000 miles longer.

Second, as this waste heap grows, the capacity to dispose of it diminishes. Some northeastern cities are without landfills; other cities will join them this year and next. In less than 10 years, only 2 out of 10 of today's landfills will still be open.

Third, as more of these old landfills close—which is desirable—intense local opposition continues to block new landfills from opening. This leaves some communities with no place to dump their trash. As a result, some community officials have decided that the answer to their waste problems is to pass the trash rather than to battle citizen activists. These officials are passing almost 50,000 tons of trash each day; that is 60 million tons a year from about 28 million people. Much of this garbage is being passed from cities in one State to rural communities in another.

In my home State of Montana, we have had serious inquiries, for example, to take trash from New Jersey. For it to be cheaper to haul the trash 2,500 miles, pay the transportation costs and the tipping fees, than to manage the trash closer to home is unbelievable and also unacceptable. Shifting pollution from one State to another is no answer. Erecting unconstitutional barriers isn't the answer either.

Nevertheless, some 37 States from Maine to Arizona have adopted or are considering legislation to restrict solid waste imports, all in the name of protecting their environment. While these State-imposed waste bans are new, the political imperative allowing individual States the right to protect the environment is not.

For more than 25 years, Federal environmental law has recognized the primacy of States environmental protection. These laws have allowed States to develop and implement environmental programs and they have specifically reserved a States' right to more stringently protect their environment. This authority has also been upheld by the Supreme Court.

However, the legal status of State-imposed waste barriers is also being challenged in the courts. The courts have held that States, acting on their own, to restrict interstate waste unduly burdens interstate commerce. The most recent case over the Indiana statute, for example, is still being litigated.

Congress, on the other hand, has specific authority under our Constitution to regulate interstate commerce, and Congress has been asked to authorize State limits on interstate waste disposal.

So what is the answer? First of all, we cannot and will not limit the right and obligation of any State to protect its environment from solid waste or any other form of pollution. Second, we will not allow any State to become a garbage dump for any other State. We cannot force any State to take another State's garbage simply because the exporting State cannot or will not deal with its own mess. We must find a workable solution that protects States' rights without fighting a new civil war on waste.

Today we will hear from elected and appointed officials and other waste experts and I hope their suggestions will be both creative as well as workable. I also hope to move quickly to deal with the subject and resolve this on a very timely basis.

I notice that my colleague, Senator Lautenberg from New Jersey is here. Senator, we are honored to have you here. If you have a statement this would be the appropriate time.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

I appreciate your calling this hearing. We are here to review proposals and to give States the power to keep out wastes from other States. No State enjoys transporting its materials to any other State, but we have to work together to solve the problem. No State wants to take on another State's problems, no matter what they are, whether they are economic, energy, or otherwise, but there are times when we are called upon to cooperate.

Landfills are closing around the country. Garbage is being shipped longer and longer distances at higher and higher costs in order to find landfill space. Understandably States are restive about being on the receiving end, but that does not justify a hit and run effort in the United States Senate.

We have seen some short-sighted, simplistic and dangerous proposals that ignore the broader issues. We have to discuss these proposals today and the matter of our national solid waste crisis. We generate 180 million tons of garbage a year. That's 4 pounds of trash for every person every day.

Our throw-away culture wastes resources and it wastes energy. It threatens our health. Many of our landfills are leaking toxics into our ground water and many of them have become superfund sites and we are paying a heavy cost to clean up. At the same time, we are running out of places to put our garbage. Landfills are closing across the Nation. Some areas now face a short term crisis and more areas will soon face them.

We need a comprehensive approach to solid waste. The Federal Government needs to respond and respond responsibly. We need to cut the wastes we generate and recycle the waste we create. Only the Federal Government can regulate products that flow in interstate commerce, to promote recyclable products and to reduce the use of materials that become an especially heavy burden at the end of the waste stream.

We need to promote and disseminate information technologies to reduce wastes which will be generated, and we need to build better and safer facilities to treat and dispose of waste that cannot be recycled. The Federal Government needs to set national standards for landfills and incinerators.

These are not simple issues, Mr. Chairman. We need a comprehensive approach. I am pleased to be a cosponsor of the bill that you and Senator Chafee developed that takes that comprehensive approach. That bill would extend and revise the Resource Conservation and Recovery Act, RCRA. That is the place to consider proposals affecting interstate movement of solid waste.

Mr. Chairman, the reason that we are here this morning is that some would argue that there is a simple answer to the problems I have outlined. All you have to do is shut them out. Let the States keep their garbage. Let every State fend for itself. That is obviously not a solution; that is a cop-out.

Rather than promote a coherent, national solid waste policy, we bulkanize environmental programs. We would undercut existing efforts to address the waste crisis.

Mr. Chairman, definitions enter into this debate in kind of a perverse way. What is trash? What is garbage? Is it the material that is transported from Indiana via the waves of the wind, deposited on New Jersey or is it the transportation that takes in trucks, rail, cars, and things of that nature? Either way, one State is on the receiving end of the other State's problems. We have to work together to solve them.

For years, States like Indiana sent its acid rain to eastern States like mine. We didn't build a wall around the midwest; we developed a comprehensive, clean air policy and we must give States time to adjust.

Proposals to allow States to ban solid waste are unfair. Until 1988, New Jersey took in a lot more garbage than it shipped out. Our landfills are full of out-of-state garbage. In fact, the City of Philadelphia went to the Supreme Court to vindicate its right to dump in New Jersey. Now that New Jersey's landfills are closing, some would say, okay, that's the end; we're now going to shut the door on New Jersey's temporary problem without giving us time to develop solutions.

This is a chronic problem. We ship nuclear, hazardous waste to States that can accept it. It is not a desirable thing to do but the fact is that we have to cooperate and find the best way to solve our problems.

The proposals before us, Mr. Chairman, turns our policy making on its head. They would impose a severe penalty on a State like mine that has to export its waste before we have had a chance to rewrite RCRA to set the standards we expect States to meet before we have set up programs to help them, and before we have given the States the chance to conform. We should layout a policy in RCRA and then give a State a chance to respond.

New Jersey is making the effort. We are now recycling 39 percent of our garbage. The planning effort which Governor Florio has established is just the type of program all States need to undertake. We will hear from him soon. The task force the Governor set up has a goal of recycling 60 percent of our garbage.

I understand the Governor is going to make a proposal here today and that is to let EPA impose standards on States that export solid waste, but before those States impose burdens on others, EPA would have to make sure that they are pursuing a plan of action to deal effectively with their problem within their own borders—that makes sense—those States that could not face higher costs than States receiving their waste.

New Jersey is moving fast to deal with the problem but change won't come overnight. Even with aggressive State leadership, it is going to take time to implement waste reduction, recycling and waste management programs. The right kind of Federal program can make the States' jobs easier or harder.

Let me say right now, I am prepared to work hard to find responsible ways to deal with our garbage crisis nationally. New Jersey has already shown that it has a commitment to that program, but I will fight any effort to railroad through any ill-conceived program that is going to bury my State. It is going to take time and effort to develop the national, comprehensive policy we need to require States to plan for waste management, to require the Federal Government to stimulate waste reduction or recycling efforts and to require States to develop strong recycling programs.

Mr. Chairman, I look forward to working with our committee to address our solid waste crisis and I commend you for holding this hearing and taking the leadership role that you have.

Senator BAUCUS. Thank you very much, Senator.

You have been a very active, creative and helpful member of this committee, particularly when it comes to environmental matters that affect New Jersey. I look forward to your valuable contribution to this effort.

I would now like to recognize a new member of this committee, Senator Metzenbaum from Ohio.

Senator Metzenbaum.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Thank you, Mr. Chairman.

I am happy to be here and when I took the slot on this committee I knew that it would provide me the opportunity to address some very thorny environmental issues. None could be thornier or, for that matter, more problematic to the State of Ohio, than the issue of the interstate transportation of municipal solid waste.

Ohio has the dubious distinction right now of competing with Pennsylvania for the title of "Dump Capital of America." More out-of-state garbage is dumped in my State and the State of Pennsylvania than anywhere else in the country. We used to call Ohio "the heart of it all." Many people in the State have now taken to calling it "the dump of it all." This is no laughing matter.

In 1988, almost one in every five tons of waste disposed of in Ohio came from somewhere else and those numbers are growing. Most of the trash is coming from eastern States like New York and New Jersey. My State has attempted to get its own house in order, to address its own solid waste disposal needs.

Two years ago Ohio enacted legislation which established local solid waste management districts. Throughout the State long range plans have been made to dispose of the trash Ohioans will generate now and in the future. Other States should do likewise.

The truth is Ohio still has not been able to slow down the influx of garbage from other States. That out-of-state waste remains an uncontrollable problem. We cannot solve the problem if we deal with our own wastes and other States dump their garbage in our State.

Even though landfill disposal costs in Ohio have increased in recent years, these costs are still not high enough to discourage others from dumping their trash within our borders. Consider this, until recently New Jersey had the honor of being the biggest exporter of garbage to Ohio. Now, according to Ohio officials, New York may have seized that honor.

That is because when the disposal fees at the Fresh Kills Landfill in New York were more than doubled last year, it became more economical to haul New York City trash hundreds of miles away for burial in Ohio's landfills. Something is truly perverse here. Cross-border dumping is one thing. Neighboring States can and do utilize each other's landfills. Some major cities are located nearer State borders and the closest disposal facility may be across the line.

Mr. Chairman, something is dreadfully wrong when the dumping is long distance and headed in only one direction—say from New York and New Jersey to Ohio and elsewhere. I have tremendous respect for those who represent New Jersey and New York in the United States Senate, but I don't have any respect for their trash and their waste coming to my State. As individuals, we would welcome them. With respect to the trash, no way.

We have got to put a stop this. States should look to handle their own wastes before shipping it elsewhere. Senators Breaux, McConnell and Coats are all here today because they feel Congress ought to give the States the ability to restrict interstate import of solid waste. I couldn't agree more.

In fact, I cosponsored Senator Coats' amendment on the topic when he tried to offer it to the Chemical Weapons Bill in May. Having said that, I am anxious to hear from all the distinguished witnesses that are scheduled to testify today. I hope that we can find ways to resolve what has become an outrageous problem for States like Ohio.

I am looking forward to hearing from Governor Florio, for whom I have tremendous respect, but I think we all have to work together to find a way to keep Ohio from being the dumping ground of America.

Thank you.

Senator BAUCUS. Thank you very much, Senator.

Now I would like to recognize the Senator from Connecticut, Senator Lieberman.

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thank you, Mr. Chairman.

Thank you for holding this hearing. In a way, I think this is a little bit of an appetizer—it seems inappropriate to use that expression in regard to garbage—but it is a preface to what will be the focus of this committee's attention in the next session as the leadership of the committee—particularly yourself—have denoted it, which is to focus on the tremendous solid waste problem we have in America, the garbage problem and what to do about it.

I expect that we will be looking particularly at two of the long-term answers to the problem which are source reduction and recycling. I think for too long in America we took this growing mound of garbage and argued about whether we were going to burn it or bury it. I think now we are understanding that we have a greater capacity or wiser alternative here which is to see if we can reduce the mound of garbage. It is in that regard that I want to say a word or two about the topic of this hearing this morning.

My concern with some of the proposals to limit the interstate transportation of solid waste is the effect that they will have on effective recycling programs. I can tell that in the northeast at least, the Connecticut Department of Environmental Protection tells me that recycling markets must be developed on a regional basis.

In our own State, Connecticut recently enacted what is widely regarded as one of the most innovative and far-reaching newspaper recycling bills, but existing facilities within the State that can use the newspapers are limited.

On the other hand the DEP tells me that these old newspapers can help to supply facilities such as boxboard mills in areas within the northeast and that the old newspapers could also help to support a mill for producing new newspapers from recycled material. Connecticut mills currently use more old corrugated containers that Connecticut recovers through its recycling program, so the solid waste is moving in both directions.

Unfortunately, some proposals which would allow States to restrict the importation of solid waste may prevent the development of recycling markets by allowing one State to prohibit a recycling facility within its borders from accepting waste destined for that facility. I don't think that result would help us. Obviously, it would not help us in our efforts to do something substantial about the municipal solid waste crisis facing this country.

I hope that we will keep that in mind as we consider the amendments and proposals that come before the committee this morning and the various proposals that come before us on the floor in the years ahead.

I know that we are going to hear from Governor Florio and Commission Jorling about some of the innovative and far-reaching steps which their States have taken to deal with the solid waste crisis and I hope that any amendments which may be offered in the near future on the Floor or in the longer term before this Committee take into account the need to encourage the development of adequate and strong recycling markets.

Thank you again, Mr. Chairman, for convening this meeting.

Senator **Baucus**. Thank you very much, Senator.

The Chair now recognizes the Senator from Minnesota, Senator Durenberger.

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator **Durenberger**. Mr. Chairman, I just stuck my head in here a little while ago and I noticed a large number of Democratic members of this committee and no Republicans. I said to myself, garbage is too important an issue to be left to the Democrats, so seize another issue, take another issue away from the President's party so that is principally why I came.

My State is a shipper rather than a shippee, but it is also one of those States that has struggled in a variety of ways to put together a public policy that will deal with the issue. I think we all understand that so much of commerce today is interstate in nature and the solutions to these kinds of problems, whether they be the solid waste, the hazardous waste that we have struggled with, are just going to have to be dealt with on a national level.

As a member of the minority party on this committee, even though I don't agree with Senator Coats' solution to the problem as presented on the Floor, I want to compliment him for raising it and bringing it to the attention of, not only this committee which has dealt with it off and on, but to the national attention of a lot of people. I compliment Dan for having done that, you, Mr. Chairman, and the other members of this committee, for having insisted on this hearing, calling the first four brilliant witnesses and our former House colleague, and now Governor Jim Florio, to give us advice on how to solve the problem.

Senator BAUCUS. Thank you, Senator.

I would like to now turn to our first panel. We are graced to have four members of our august body. I'd point out to the Senator from Minnesota that our panel is bi-partisan. We have two Democrats and two Republicans interested in waste management.

I'd like to recognize the Senators in the order of their appearance. Senator Bradley, you were first here. Why don't you go ahead?

STATEMENT OF HON. BILL BRADLEY, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman.

I appreciate the opportunity to come before the committee and offer testimony on this very pressing issue.

Mr. Chairman, New Jerseyians are no strangers to solid waste imports. Up until 1988, in fact, more waste came into the State of New Jersey than left the State. New Jerseyians did not appreciate the out-of-state garbage and we tried to shutoff the flow—particularly the flow from Philadelphia—as Senator Lautenberg has noted, but we couldn't. The commerce clause of the U.S. Constitution was interpreted by the Supreme Court to prevent New Jersey from shutting its doors to other States.

Now, Mr. Chairman, our landfills have filled, many to capacity. Many closed because they were environmentally unsound. In the 1970s, New Jerseyians used over 300 landfills statewide. Some of those are now Super Fund sites. Today, on the other hand, over half of New Jersey's solid wastes ends up in just 12 landfills.

For the last decade, we in New Jersey have struggled with solid waste problems that most States have yet even to face. Frankly, we are in the middle of our own crisis. As my colleagues know, the data on solid waste management is often sketchy and inaccurate. However, there is one statistic that I feel confident makes the case.

New Jersey's tipping fees verge on the incredible. Our average tipping fee for out-of-state disposal is over $110 per ton. Over the last eight years, the cost of trash disposal in New Jersey has gone up an astounding 600 percent.

Mr. Chairman, anyone familiar with the solid waste issue knows there is no obvious solution or miracle technologies. Sitting presents enormous problems. Some of my colleagues may not be able to appreciate the difficulty of creating new waste management facilities in a State that, on the average, has 1,000 people per square mile and, in some places, 40,000 people per square mile.

It is no secret—and one of the reasons other people are here testifying today—that New Jersey now exports large quantities of solid waste. There are other exporting States: New York, Pennsylvania, Missouri, the District of Columbia, Massachusetts, California, a few others. But Mr. Chairman, I think you ought to know that I'm not proud of that fact, New Jersey isn't proud of that fact, and we are not sitting back counting on the wide open spaces of other States as our long-term solution to solid waste disposal.

New Jersey is being aggressive and we are being responsible. We have enacted State-wide, mandatory recycling programs. We have made waste reduction and recycling a first order priority. We are doing some outstanding technical work on plastics recycling and just over a month ago in the Urgent Supplemental, I got an amendment in there that led to a recycling demonstration of lead storage batteries for New Jersey. So, Mr. Chairman, this is some indication.

Let me be quite frank with you. If an absolute ban on the export of municipal solid waste were to become a law today, it would create very serious problems for New Jersey.

It's obvious that solid waste export, especially when it serves as a substitute for planning, is a critical issue for this committee. However, I would urge you to keep under consideration that waste disposal is complex and cannot and should not be considered apart from waste generation. As I said, New Jersey is literally leading the country in recycling. I don't know any other State that currently recycles over 30 percent of its trash in a mandatory State-wide recycling program.

I, for example, personally take my paper, bottles, and cans to a recycling center in my town in New Jersey. Likewise, I am unaware of any State that is likely to pursue a recycling goal of 60 percent by 1995 as the State of New Jersey announced just 10 days ago, and as the Governor will talk about when he testifies.

Mr. Chairman, New Jersey is truly entering uncharted waters. Are these rates sustainable? What happens when other parts of the country begins to recycle at the same rate at which New Jersey hopes to recycle and is recycling? Will there be markets for the goods? These issues are completely relevant to the ability of States to plan for the future and for an effective nationwide solid waste strategy. Yet, there is nothing in any of the proposals before the committee today that would assist States in recycling or that acknowledges the Federal role.

Mr. Chairman, this committee may eventually endorse a measure which narrows States' options for waste disposal. It may do that, but the committee should likewise and simultaneously pursue a strategy which will enhance all our options for waste management. I hope the committee will look beyond the narrow political solutions to a problem of national significance.

Today, as I have said a couple of times, as Senator Lautenberg has said, and as other Senators will constantly reemphasize, New Jersey exports a lot of solid waste. However, before we rush to condemn those few States that are now exporters, let's focus on the point that a lot of other States might find themselves in a very similar position in the years ahead.

When you consider that 45 percent of the landfills operating in 1988 in this country will close by 1991, and that by 1993 the landfills that now accept 56 million tons of solid waste will be closed, and only 20 million tons of solid waste that will be replaced with new landfills if the new landfill replacement rate continues.

This is an enormous problem and particularly, let me just add one other thing. When you add to the fact that there will be new federal regs on landfill criteria that are going to come out at the end of 1990, there are going to be even more landfills that are going to be closed.

I would hope, Mr. Chairman, you would see that with the implementation of stricter environmental standards, with the closure of more landfills in this country than anybody imagines today, what we need is a much broader policy. That is not going to be developed overnight, but it is essential that we do have that longer term policy, that that policy be aggressive and effective, and environmentally sensitive.

Mr. Chairman, I thank you for your willingness to hear the testimony today and also to allow Governor Florio to testify.

Senator BAUCUS. Thank you very much, Senator.

Next in order of appearance is the Senator from Indiana, Senator Coats.

STATEMENT OF HON. DAN COATS, U.S. SENATOR FROM THE STATE OF INDIANA

Senator COATS. Thank you, Mr. Chairman.

Thank you for commencing this hearing on what I think we all would agree is an extremely important and serious issue. I couldn't agree more that the committee needs to immediately address, on a national basis, the problem of waste disposal.

Let me cite to you a little bit of the problem that we are facing in Indiana and the reasons why I introduced my legislation last November 18th and attempted to have that legislation considered on the floor of the Senate just a few months ago. I think all of that prompted this particular hearing.

Up until 2 years ago, Indiana received very little out-of-state trash. We estimated, although we don't have any total scientific, established figures as to just what the exact amount of out-of-state trash is coming into Indiana—my bill addresses that particular question—that less than 2 percent of the trash disposed of in landfills in Indiana originated in sites outside of our State.

Today, the Indiana Department of Environmental Management estimates that up to 30 percent of all the trash being disposed of in landfills in Indiana comes from out-of-state sources. We export only 2 percent of our trash, almost all of it to neighboring States in agreements that we have with those States for interstate disposal of trash.

We have a serious landfill capacity problem. In 1983, we had 150 operating landfills. Today we have 77, virtually half of what we had before and it is estimated that by 1995, we will be down to half again as much as we have.

People in Indiana are not anymore anxious to open new landfills as they are in New Jersey, but we are committed to disposing of the wastes that we generate in Indiana. We have set in place a very ambitious plan for recycling, for source reduction, for sitting landfills, for a whole series of environmentally-sound methods of disposing of waste. We are also looking to the future. We are planning for our future.

What we find totally unacceptable is the influx over the last 2 years of everyone else's problem. We have convoys of trucks lining up at landfills in Indiana dumping on a daily basis out-of-state trash. Let me give you just one illustration of the problem that we are dealing with.

There is a small town in Indiana called Centerville. It has 250 residents. Until last year, the town dump, which they called it—it's now called a landfill because it was purchased by out-of-state owners and the name was changed—received about two truckloads of waste per day generated from the 250 people that lived in Centerville, Indiana.

That town dump was sold to out-of-state investors. They doubled the capacity and today, that landfill has between 30 and 50 semi-truckloads of trash from the East Coast pouring into that town on a daily basis. Last year, 6,000 semis dumped 240 million pounds of States' trash from outside of Indiana in this one landfill in Centerville, Indiana.

Exactly 1 year ago yesterday, 65 residents of the town formed a committee to take turns volunteering lunch hours, sacrificing vacation time, taking personal time, to patrol the landfill during every hour that it was opened. These concerned citizens faithfully recorded license plates and registration numbers of every truck dumping trash at the landfill. The patrol is on duty, as I said, every hour that the landfill operates. Yesterday marked the 1 year anniversary.

They have documented nearly 6,000 semis, 240 million pounds of trash. They have also recorded the license plates and checked through the Interstate Commerce Commission the origin of the trucks coming into Centerville, Indiana and well over 40 percent of those trucks are coming from the State of New Jersey. In fact, those drivers that volunteered to be interviewed, 38 percent indicated that their point of origin was New Jersey.

This is just one example of what I think is occurring all across the country. It is resulting in policies which I think are counterproductive to our ability to deal with the mounting solid waste crisis.

New Mexico, for instance, along with Mississippi, have enacted moratoriums on siting of all new landfills solely for the purpose of keeping out-of-state owners or in-state owners from opening up landfills or using landfills for the disposal of out-of-state trash. Pennsylvania has embarked on a statewide trash net operation whereby the State police are ordered to inspect and cite trucks for the most minor regulatory violations, all in an effort to stem the flow of trash from States like New Jersey and New York. Maine has banned for profit trash industry, in a sense trying to get a hold of their own destiny.

The legislative history of this is that given this onslaught of out-of-state trash filling up our landfills to the point where we cannot begin to take care of our own needs and do our own planning, I introduced legislation, as I said, on November 18th which effectively did three things.

One, it gave the Governor the authority to ban shipments of out-of-state trash. It did not mandate banning. That point has been confused over and over. The Coats' bill does not automatically ban shipping interstate trash. It simply says the governing authority of the State shall have the authority to ban if he deems it necessary.

Two, it allows the State to regulate and impose fees on trash so that it can control the cost differential that exists between the States that promotes the exporting of trash on an interstate basis.

Senator BAUCUS. Senator, if I could briefly interrupt you here, we have a long witness list. I would encourage you to be as brief as you can.

Senator COATS. I will do my best to summarize, Mr. Chairman.

Thirdly, the bill provided the mechanism for monitoring shipment of interstate trash. We need a better handle and a better way to determine how much trash is going between the States than having residents having to form voluntary committees and record license plates. So my bill provided for a reporting mechanism to the EPA of the origin, shipment and content of trash shipped over a certain amount on an out-of-state basis.

Mr. Chairman, as you know, I have searched in vain for an appropriate vehicle to add my legislation to. I would love to have this come up on a standalone basis, a debate on the Senate floor and a vote. There has been no appropriate bill to which to attach this, so I offered this as an amendment to the Chemical Waste bill that came before the Senate a few months ago.

As we all know, that effort was thwarted by the gentlemen from New Jersey. I don't blame them for standing up for their State. They indicate that they have a serious problem in their State and they want to deal with it. Well, we want to deal with our problem, but we don't want our problem made more serious by their shipping their trash to our State while they deal with their own problem.

So I think what the Coats' bill is saying, and the effort that I am trying to undertake, is simply let's give the States the authority to regulate and deal with their own problems. That was mentioned at Indiana Ships Acid Rain from West to East. Well, that was addressed and Indiana is paying under the principle that this committee has established and propounded on the Senate floor and that is, the polluter pays, the polluter takes care of his own problem. Cost-sharing was specifically rejected. So Indiana is paying for the clean-up of what the East Coast perceives as a transshipment of pollution west to east.

What we are simply saying is that we don't want a shipment back east to west and then someone coming along and saying, you'll just have to take our problem until we find a solution. I find it somewhat disingenuous that at a very time when New Jersey is awash in trash, a moratorium has been placed on incineration of trash, the fees are so high in New Jersey that people apparently don't want to dump it there, but what many of us from the midwest and other States are simply saying is, don't try to alleviate our problem by compounding our problem.

We are tired of truckloads and truckloads of trash pouring into Indiana, taking away our ability to determine our own destiny in terms of how we deal with our environmental problems and our State is making serious efforts. We have passed legislation, we have an ambitious recycling plan in place. We will stack our plan against anybody in the country, but it is impossible for us to complete that plan. We are simply creating state warfare here if certain States, like New Jersey, insists on dumping all of their trash in Indiana and other States.

Mr. Chairman, thank you for convening this hearing. I look forward to working with the committee. I hope that we can find an acceptable solution. Thank you for the openness and willingness to allow us to testify and present our case to you.

Senator BAUCUS. Thank you very much, Senator.

Senator Breaux.

STATEMENT OF HON. JOHN BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman and colleagues on the Public Works Committee. I'm delighted to be back at the committee. I'm a little nervous, however, sitting between my two good Republican colleagues that you have me sitting between this morning, but we're delighted because on this issue, we're all in the same position.

Mr. Chairman and members, the States of the United States are playing a game and the game is called, pass the trash. It is bad public policy, and even worse than that, it doesn't work. We are generating about 160 million tons of trash every year. That is about 3½ pounds per person every day. It is enough to fill a convoy of 18-wheel trucks halfway to the moon every year full of the garbage that we generate every year just in this country.

While we expect to increase the amount of trash that we are generating, we are closing landfills every day. Most of that trash has been dumped in landfills. So while we are increasing by incredible margins the amount of garbage that we generate, we at the same time are eliminating the area of more than two-thirds of the landfills for any local community to ever come up and permit a new landfill.

All of us have talked to mayors and councilmen who have refused to bite the bullet and grant a permit for a landfill in their jurisdiction. It is the NIMBY syndrome, not in my back yard, do it somewhere else. So we've got an incredible problem that I think it is absolutely essential that this Congress try and address with something as reasonable and rationale, that does not unfairly treat States like New Jersey while at the same time, does not unfairly treat those States who feel they are being dumped on because of the pass the trash type of game that so many of the States are facing.

Over 10 percent, I think you will hear today, of the trash that is being generated is shipped out of State, get it out of here, permit it somewhere else, but it is not working and this legislation that we are trying to work on, hopefully will provide a solution. We cannot continue to ship it.

In my own State, we've all got horror stories. The press labeled a 63 carload train that came from Baltimore to Louisiana loaded with sewage sludge, they labeled it the poo-poo choo choo. Nobody wanted the poo-poo choo choo in their respective State. People stood on the rail tracks trying to stop it. Baltimore didn't want it but neither did Louisiana.

We all remember the horror stories of the garbage barge that literally sailed in circles for months because no one wanted the garbage barge to land in their port. That is the type of problems that we are facing in this country and that literally screams for some type of reasonable solution.

We all know the Supreme Court says you can't stop out-of-state trash. Some legislation says, let's just change the commerce clause and say the States have the right to do it. We need to do more than that.

Mr. Chairman and members, I've introduced a bill, S. 2468 which I think provides a balanced solution to the problem. One, it does more than just give the State the ability to say no to out-of-state waste. That is not going to solve the problem. What is it going to do to States like New Jersey?

This legislation will require each State to come up with a plan and the plan would have a number of features that would be mandated. This helps those local mayors and citizens who don't have the political courage and understanding to go ahead and do any permitting because this legislation would require that each State come up with a solid waste management plan that will take care of the waste that is generated within their State. That will be their obligation, first and foremost, to take care of the waste generated within their State.

The State can do that in a number of ways. One would be to reduce the amount of trash they produce. Two, encourage recycling—the legislation provides federal assistance to encourage recycling, it provides help and assistance and technology to help them do energy and resource recovery, and as a final option, requires them to site landfills within their States as a final option.

The Federal Government would work with the States to provide assistance to help the State come up with the plan to take care of their own trash. If the State adopts such a plan, and only if they adopt such a plan, then they would have the authority to restrict out-of-state waste if they want to do so.

The important thing is the State should make that decision. Do you know who makes the decisions now—private companies, private individuals who can buy a landfill. He determines whether a particular State is going to take waste from another State. If he has the capacity, let it come on in. That is what is happening and it is not working.

So, a State with an approved plan would be able to refuse out-of-state waste, would be able to charge higher fees if that is in their interest in order to handle the out-of-state waste and half of the proceeds of those fees would go to the locality where the trash would be actually received. So the State would get some help if, in fact, they are going to accept out-of-state waste.

The bill, I think, will also encourage interstate cooperation. There is no question that some States don't have room for anymore landfills. I think maybe the Senators from New Jersey are correct. There is no more land. There is probably no more land in a lot of areas. They are going to have to do something.

We ought to have interstate compacts encouraging the receiving of out-of-state waste under a plan that's been approved that would allow them to do so in a manner that makes sense. So, Mr. Chairman, it is much more than just passing a bill that says, stop out-of-State waste. I think S. 2468 would allow us to do some planning, would encourage the States to do it, and in fact, make the States do it.

That way, I think you are going to see more landfills approved properly and under the rules within a particular State. I think it will go a long way to helping to solve the problem.

Thank you for your attention.

Senator BAUCUS. Thank you very much, Senator.

Senator McConnell.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator McCONNELL. Thank you very much, Mr. Chairman.

We have heard the problem graphically described by several different witnesses. I think I will take a little different approach and just first indicate what the situation is in Kentucky and then go to another alternative. Senator Coats has an approach, Senator Breaux has one and I have one that is slightly different.

In Kentucky, we have recently enacted some of the strictest landfill regulations in the entire country. The net effect of that is going to be that within 2 years we are going to have considerably fewer landfills in Kentucky to deal with a problem that is already quite serious. It has already been described. States like Kentucky and Indiana are becoming the garbage barge of the country and we'd like to work at the federal level for a solution.

The bill I have introduced takes a little different approach. The Solid Waste Treatment and Disposition Fee Act, which is what I call my bill, gives States the authority to discriminate between in-state and out-of-state garbage and to impose a higher fee on out-of-state garbage. It also sets up a registration system and creates a solid waste database.

If other States want to send their garbage to Kentucky, my bill insures that the residents of those States and not Kentuckians pay the true price of disposing of it. It deals with the issue of fairness. If it cost $150 a ton for the residents of State A to dump garbage within their borders, why should State B have to accept that waste for less than $150 per ton?

My bill does not grant States authority to ban waste because I am not convinced that an immediate ban on interstate transportation of our nation's waste is in the country's best interests. Indeed, some interstate transportation of waste is probably necessary if we are to deal with this issue on a rational basis and a national basis.

My bill does grant immediate authority to impose fees on such wastes and helps States recoup the costs of accepting such wastes.

I heard Senator Lieberman earlier talking about recycling. My bill exempts facilities importing waste solely for the purpose of recycling. Although not expressly stated in my bill, it is not my intent to interfere with companies shipping waste among facilities located in different states for in-house treatment.

Also, my bill is not intended to interfere with existing or planned interstate waste compacts. Those compacts are good and necessary vehicles to help States deal with waste.

Some counties, under my proposal, may find it economically attractive to have selected landfills import garbage. Recognizing this fact, my bill provides flexibility to the States to structure the fee so that it is appropriate for the particular situation existing in each State.

My bill creates a useful revenue source for counties or States. Revenues can be used to offset road repair, make landfills safer by helping landfill operators meet new, more stringent landfill regulations, lower the county's tax rate, or create a trust fund to be used to mitigate environmental contamination from the landfill.

As I noted earlier, I do not think an immediate ban is necessarily good national policy. However, a ban might be appropriate if it were authorized after giving the exporting states a period of time in which to get their houses in order through recycling, waste reduction, and better landfill capacity management.

I recognize the concerns my friends from New Jersey and New York have with the bills that authorize an immediate, out-right ban. However, whether we authorize an immediate fee only or whether we authorize an immediate fee and then a ban after a certain period of time, Kentucky needs immediate relief. That is why I proposed my bill. It is, I believe, a reasonable and fair approach to address the problem in my State without putting exporting States in a position of not being able to export their wastes at all.

As I've said before, I am attempting to help States handle an immediate problem—out-of-state waste. It is an enormous and significant problem for my State. I recognize that my particular proposal—probably none of our proposals up here—is a total solution to the nation's garbage crisis. Nor is it intended as such.

Federal and State Governments must continue to work together to develop a responsible, comprehensive strategy which combines source reduction, recycling, combustion and landfilling. In the meantime, I respectfully suggest to the committee that my bill would give States a little breathing room to get their own waste management problems under control.

Mr. Chairman, I appreciate very much the opportunity to be here today.

Senator BAUCUS. Thank you very much.

I notice that Senator Chafee and Senator Warner are here. Do either of you have a statement you'd like to make?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator **Chafee**. I will just put a statement in the record.

[Senator Chafee's statement follows:]

Opening Statement of Hon. John H. Chafee, U.S. Senator From the State of Rhode Island

Mr. Chairman, I would like to thank you for scheduling this hearing on the important issue of interstate transport of waste.

The generation of waste and its disposal is clearly one of the major problems facing the Nation today. Each person in this country generates, on average, four pounds of waste per day, almost double what it was in 1960. Although about 80 percent of this waste is landfilled, EPA has estimated that the number of landfills has dropped significantly. In the 1960s something on the order of 30,000 landfills were in operation, while today there are fewer than 6,000. By the end of the century, it is anticipated that 80 percent of those landfills will closed.

The rub comes in when it becomes increasingly difficult to site new landfills to replace the old ones. For instance, over the past four years, 89 landfills were closed in New York—only one new one has opened. As a result, many States are now exporting their waste to landfills in other States. One reason for this is economics. It is much cheaper to haul waste a few hundred miles to a rural, poorly controlled landfill, as opposed to a new state-of-the-art facility in a densely populated area—assuming you could get one sited there in the first place.

Although interstate export of waste may be a panacea for those States that cannot dispose of their own waste within their borders, it creates a new set of problems.

First, it allows the exporting State to avoid meeting its responsibilities to take care of its own waste problems, either by siting new landfills, or reducing waste through recycling.

Secondly, it presents capacity problems for the receiving states. Sure, Indiana may be able to accept New Jersey's today, but what about five or six years from now—will Indiana become an exporter of waste because a good part of its capacity was taken up by New Jersey?

A number of proposals have been introduced to address this problem. They range from bills giving States the authority to refuse solid waste imports at their borders, to allowing States to impose special fees on waste imports, to requirements that will encourage states to develop long-range waste management plans.

We have a number of distinguished witnesses here this morning, and I look forward to a very interesting and productive hearing.

Senator **Chafee**. I think one of the key things in my statement, and others have mentioned it here—I heard Senator Breaux touch on it—is the remarkable increase of waste per person in our Nation. Currently it is close to four pounds per person per day which is almost double what it was 30 years ago. So we are on a wrong track here.

I have a question I would like to address to the panel.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator **Warner**. Mr. Chairman, I would simply put my statement in the record.

[Senator Warner's statement follows:]

Opening Statement of Hon. John W. Warner, U.S. Senator From the Commonwealth of Virginia

Mr. Chairman, we are here today to discuss an issue of vital importance to a great number of states—that of transportation and disposal of waste across state lines. As the number of usable landfills in this country decreases every day, the question of where to dispose of waste is becoming an increasingly pressing one.

As you know, Mr. Chairman, approximately half of the States transport some portion of their solid waste outside of their own borders. The Commonwealth of Virginia receives waste from other States, but exports some waste as well. Virginia is particularly vulnerable to imported waste because of its proximity to large cities across its borders.

Clearly, Mr. Chairman, this is a problem that must be addressed on the Federal level. In my view, States should have the ability to decide how they want to deal with the question of imported waste. Some pending bills propose that, in exchange for being granted decision-making authority in this area, States should be required to develop a solid waste management plan that would identify the amount of waste expected to be generated in the future, as well as how that waste will be handled and the overall volume of waste can be reduced. That is clearly an idea that this Subcommittee should consider. Such planning would likely go a long way towards solving the interstate transport problem, in addition to addressing the growing nationwide solid waste crisis.

There are currently several proposals in Congress to deal with the problem of interstate transport and disposal of waste. Today, I will listen with great interest to the testimony of some of the sponsors of these proposals, as well as to the testimony of the other witnesses with knowledge in this area. I thank the Chairman for scheduling this hearing, and I look forward to working with other members of this Subcommittee to find a reasonable solution to this problem.

Thank you, Mr. Chairman.

Senator WARNER. I wish to say that this Senator, at this time, taking a phrase that is well known in this town, "Just Say No," that is my position. A State should have the right, consistent with the State's rights doctrine, to just say no.

Senator BAUCUS. Thank you very much, Senator.

I just have a basic, fundamental question I'd like all of you to address very briefly. That is, should a State have the right to effectively force its garbage on another State by adopting very strict standards which, in effect, force the export of garbage from that State to another?

In the same vein, on the other side of that same coin, should a State have the right to have low standards, therefore low tipping fees, which tends to attract garbage into that State so that a State can make up its mind whether it would accept that garbage because it is good for business or decide not to accept the garbage because it doesn't want to site the garbage in that State?

What I am really getting at is, is it fair for a State to, in effect, on the one hand, have such high standards that it is exporting its garbage, and is it fair for another State on the receiving end to have such low standards that it tends to therefore economically provide incentive to accept another State's garbage? Senator Coats.

Senator COATS. Well, Mr. Chairman, obviously my position is clear that I don't believe a State should have the right to avoid making tough political decisions as to sitting its own landfills or disposing of its own waste by exporting the problem to some other State.

By the same token, if a State wants to permit low disposal costs in which to deal with its own waste, it ought to have the right to do that. Indiana has low costs. As a result——

Senator BAUCUS. But does Indiana have low costs because it has lower standards?

Senator COATS. I would submit to you that the standards enacted by the legislature in the Governor's package this last legislative session are as stringent as any in the country. It is a question of States' rights, but determination of the standard, think, given the political mood of the country today in all of our 50 States is going to be that we are all going to have relatively stringent standards.

What we want in Indiana, as I think most States want, is the ability to control our own destiny.

Senator BAUCUS. So essentially, so I understand you, the preferable solution from your point of view is that a State should be able to have whatever standards it wants for sitting landfills, for example, and if a State chooses to have low standards, that is the right of that State but that State should further have the right to either prohibit out-of-state garbage or set higher fees on out-of-state garbage coming in. That is one constrict.

The alternative would be for this Congress to pass legislation which, in effect, would only allow States to prohibit if they meet certain higher minimum standards.

Senator COATS. I have no problem, Mr. Chairman, with enacting through RCRA. I think RCRA addresses that in the solid waste section in establishing minimum standards that meet health and safety standards. I have no problem with that.

Senator BREAUX. I think the point that you raise is a very valid one. One of the things my legislation is trying to do is to get some consistency because it requires every State to come up with a plan. Every State would have to have a plan to dispose of their waste along with some certain criteria. One that plan is approved, then the State would have the right to enforce it against other States as well as for their own citizens.

The problem we have right now is that States aren't making that decision. Private contractors are. Once a contractor gets a permit for a landfill in any State, that contractor receives wastes according to how much money he can get for anybody who wants to dump there. Individuals are making the decision and they are not making it according to any public policy; they are making it according to how much money they can make off their landfill.

When they receive sewage sludge from Baltimore or hazardous waste from New Jersey, or from any State for that matter, they are doing it based on economics and not on good public policy. The legislation would require a plan that would take care of that, I think.

Senator BAUCUS. Senator McConnell.

Senator MCCONNELL. Mr. Chairman, you make a valid point. I think the States are going to start raising their standards anyway. As I indicated, Kentucky now, within the last year, has increased its standards so significantly that we are going to lose landfills on our own, so States are going to have to raise their standards.

But, in addition to that, a differential fee authority granted to States, it seems to me, would have the net result of equalizing fees across the country and therefore, be a responsible way to get at the particular problem.

Senator BAUCUS. Thank you very much.

Senator Lautenberg.

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

A question that I'd like to submit to each one of you is what percentage of the waste created in your State is being recycled presently and when were your recycling plans put into effect? Can you tell me, Senator Breaux, Senator McConnell, Senator Coats?

Senator **Breaux**. I have no idea to be perfectly candid how much. We are a net recipient of both hazardous waste and a net recipient of solid waste from out of State in Louisiana.

The plan that my legislation would require would be that the States would have to do that and have a federally-approved plan in order to show what they are doing with it.

Senator **Lautenberg**. Senator Coats, do you have any idea?

Senator **Coats**. I do. We currently recycle between 10 and 15 percent, but the Legislature has enacted a plan which would require a target of 50 percent recycling by the year 2000, which I think is very similar to New Jersey.

Senator **Lautenberg**. When did your recycling plan go into effect?

Senator **Coats**. It went into effect in the last legislative session.

Senator **McConnell**. Senator Lautenberg, I can't give you statistics but I know that under these new regulations that I just made reference to, it is going to go up dramatically.

Senator **Lautenberg**. I think it is fair to say by the response, Mr. Chairman, people are working with problems and it needs some time. New Jersey is far advanced along the way. Unfortunately, we are a State that is very short of land. We are the most densely populated State in the entire Union—over 7.5 million people.

Senator Coats, you indicated in your statement, that when you offered your amendment, the midwest was willing to do its share for clean air. You said it again today, repeated that you're paying for it, and you are certainly aware of the fact that the Senate version of the clean air bill allows some time to make these adjustments. Do you know how long your utilities have to make adjustments to meet the clean air standards?

Senator **Coats**. Senator Lautenberg, the clean air bill as passed by the Senate provides for a two-stage implementation approach—Phase I by 1995 and Phase II by the year 2000—for that plan to be implemented.

Senator **Lautenberg**. That is precisely my point. I understand where you are coming from. Each one of you is aware, I'm sure, that there is a lot of unfortunate movement of garbage or trash around the country because each one of you has a State that also exports to neighbors and, in the case of hazardous waste—not under consideration here—each one of you relies on the other. Senator Breaux mentioned that you are a net importer of hazardous waste.

Well, New Jersey is also barely a net exporter. New Jersey also imports significant amount of hazardous waste. That is the structure of things and each of us is in this boat, if I may use the expression, together.

The Chairman mentioned something I think is very significant. That is, what are the standards by which each of our States, your State, are going to measure its intention to proceed to a trashless or less trash environment? New Jersey has a shortfall in landfill capacity because it closed substandard landfills as required by RCRA. Has Indiana closed its substandard landfills?

Senator **Coats**. Indiana is in the process of closing a number of substandard landfills. We have stringent regulations for sitting new landfills, but that is a decision that I think each State has to take. We don't solve the problem simply by saying we are not going to face up to the political problem and difficulties of sitting new landfills.

I don't know what the square mileage is of New Jersey but I don't think it is reasonable to say that there is no space left in New Jersey to site a new landfill. You have made a political decision not to do so but it has been made very easy by the fact that you are able to ship millions, hundreds of millions of tons of your waste to our States while you put your plan in place.

Senator LAUTENBERG. At an enormous cost and all we are saying is it is going to take some time. We are going to try to make a uniform standard by which all States will operate and you just can't put the brakes on this thing like you can on a car or truck.

Senator COATS. But in the meantime, you are going to make Indiana another New Jersey.

Senator LAUTENBERG. You should be so lucky, Mr. Coats.

Is Gary, Indiana still operating a substandard landfill?

Senator COATS. The substandard landfills—those landfills that do not meet the requirements of the State of Indiana, which as I indicated to you the Legislature has addressed, are being dealt with under the law and any landfill not meeting the standard is being forced to close.

Senator MCCONNELL. Senator Lautenberg, can I just make an observation? I understand your concern that we might be here crying because we are not doing anything at home. In fact, let me repeat that in my State we have just enacted this year some of the toughest landfill regulations in America. We are interested not just in being able to do something about New Jersey trash, but also Kentucky trash.

I think your point is valid that if we were doing nothing in our States, we sure shouldn't be here crying about your sending it down. I think we have to attack this problem both at home and that coming in. The reason I respectfully suggest that a fee differential approach might be a better way to begin to get at this problem as the committee looks at various alternatives, that encompassed in my bill, the fee differential approach, might be something that is a reasonable way to go.

Senator BAUCUS. Thank you very much, Senator.

Senator Metzenbaum.

Senator METZENBAUM. It seems to me that the issue has to do in part with how do we do this constitutionally? Senator McConnell, I have the feeling that if you have different cost figures for out-of-state wastes and in-state wastes, that indeed might be a violation of the commerce clause constitutionally.

One of the things that concerns me is that whatever we pass that we not set it up for 5 years of litigation.

Senator MCCONNELL. Could I just react? There is a cases that admittedly had to do with hunting licenses but the Supreme Court has already ruled it constitutional to have a higher hunting license fee for an out-of-state person than for an in-state person, so there is at least some authority that fee differentials may be constitutional.

Senator METZENBAUM. Yes, but then I think it has an impact upon commerce and I don't think the hunting would have an impact on commerce.

Senator MCCONNELL. I think it was a commerce clause case. I'll send it to you.

Senator BREAUX. Just to make a quick comment on that, I think the States cannot unduly discriminate in interstate commerce but Congress certainly can. I think the legislation would give Congress authority to allow for that. Congress can discriminate; States can't.

Senator METZENBAUM. I am not here to argue the legal aspects but I have the feeling that the Supreme Court decisions which do relate to this issue, I think frankly mitigate a little bit stronger in support of the Coats bill and I'm not sure exactly how your bill, Senator Breaux, deals with this question. I am not as familiar with it. I would like to ask you how does your bill deal with the distinction? What are the limitations that are placed?

Senator BREAUX. I think it is fairly clear that Congress has authority to give the States the right to treat interstate commerce differently. My legislation would require a State to come up with a plan to handle their wastes and if they do so, Congress would give the authority to restrict out-of-state wastes coming into that State that does not fit within their plan—a delegation of authority from the Congress to the States. Congress has the authority to give that delegation to the States. The States cannot do it in and of themselves. That is what the Supreme Court has held but the Congress certainly has the right to give that authority to the State, in my opinion.

Senator METZENBAUM. I think you may be right about that. My own concern is that we move forward promptly on this legislation. As a matter of fact, the kind of delay that I am concerned about is our States are trying to deal with the problem. Ohio has legislation that provides that we have to recycle 25 percent of our wastes by 1995 which is pretty close.

On the other hand, the amount of waste coming in from New Jersey alone to Ohio would far shorten the amount of available landfill that we have by 2 years, and we are very rapidly running out of landfill.

I would hope, Mr. Chairman, members of the panel, and members of this committee that we would move with dispatch because every day that we delay merely exacerbates the problem and it doesn't help us. You can't undo the damage done by the hundreds and thousands of tons of wastes that are being dumped in our States on a regular basis.

I appreciate what the Chairman has indicated on this subject and that is that we have to move in this direction, but I think there is a sense of emergency or a sense of at least urgency that we in this committee, I would hope, could act this year to try to come up with a legislative solution rather than waiting until the next session to do so.

Senator COATS. Senator Metzenbaum, I wonder if I could just second that. I think the point we want to make—because our State's are very similar—is that while we are attempting to address it, our landfill capacity is diminishing rapidly also.

While I don't in any way want to preclude the enactment and discussion of reasonable, minimum standards, reauthorization of RCRA, or a solid waste planning process which I think we all need to engage in, we can't afford to wait a year, 3 years or 5 years to have these plans drawn, implemented or approved by EPA before we have the authority to regulate the flow of out-of-state trash because it is going to be too late.

Senator METZENBAUM. I think that is the point and that is that if we can move it promptly we can work out a legislative solution. Absent that, Senator Coats or someone else, Senator Breaux, Senator McConnell, or myself might very well go to the floor and add an amendment to some pending piece of legislation. I'm not sure that is the best way to go; I would much prefer to see the committee develop a piece of legislation that we could move forward with.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much.

Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Very briefly responding to continue the point I made in my opening statement about recycling, I appreciate what Senator McConnell said about his attempts in his proposal to essentially exempt items that are shipped for purposes of recycling. I would ask my two other colleagues from Louisiana and Indiana whether they would consider the same, which is to exempt from any of the restrictions and the additional fees items that are shipped into the State for the purpose of recycling?

Senator COATS. I wholeheartedly support that, Senator Lieberman. I think that ought to be exempted and we ought to be encouraging that. To the extent that we can establish facilities and ship material that can be recycled on an interstate basis, we ought to do so. I'd be happy to add that to my legislation.

Senator BREAUX. You have to be careful with the definition of recycling. We have a hazardous waste operation in Louisiana that says they are recycling instead of burning and destroying it, and they are the largest importers of hazardous wastes in the United States as a result of that loophole. I think that our plan would encourage recycling, legitimate recycling.

Senator LIEBERMAN. I appreciate it.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator Lieberman.

Senator Durenberger.

Senator DURENBERGER. I have no questions.

Senator BAUCUS. Then we will call next on Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman.

First, I want to compliment Senator Coats. He has worked on this a long time and indeed has been very vigorous in pressing for amendments, so I join with the rest of the committee in hoping that we can do something constructive. Whether we can do anything this year remains to be seen.

Secondly, I'd like to say that the point Senator Breaux makes is a good one about each State coming up with a plan to handle its solid wastes. As the distinguished Governor of New Jersey knows, that is the very provision we included in the superfund. In superfund they must come up with a plan that provides either for their disposal of their hazardous wastes or in cooperation with other States, somewhere in one of those other States.

They have a set amount of time. I think the plan is probably due about this year and if they fail to come up with a plan, then they don't get superfund funds except for emergency response. I believe there is a lot of merit in carrying that same proposal over into the solid waste area as you propose in your bill S. 2468.

I would make this comment. There is obviously a constitutional problem about banning out-of-state wastes and that is what is at the root of the problem here, the interstate commerce clause. However, I will note that if it is a State-owned site, then a State-owned site can ban receiving from out-of-state.

That in itself presents problems because very wealthy developers move in, buy a small town's site and then the State doesn't have the money to buy it or doesn't choose to buy it. However, that is one way of banning out-of-state access.

We have a real problem here, Mr. Chairman, and it is going to take a lot of hard work trying to solve it. I want to thank each of the members, Senator McConnell, Senator Breaux, Senator Coats, and Senator Bradley for their observations.

Senator McCONNELL. Senator Chafee, would you hear one quick observation?

Senator CHAFEE. Yes.

Senator McCONNELL. The approach you didn't mention was the fee differential approach which was my bill, and I would mention to you that you are going to hear shortly from a representative of the National Governors Association who is going to suggest that is a good way to go.

Senator CHAFEE. I missed what you said first.

Senator McCONNELL. The fee differential approach as opposed to the ban.

Senator CHAFEE. Oh, I see, but as I understand, in the fee differential you have to justify the fee, the differential as applying to research that is required. It's my understanding, and I stand to be corrected—you used the instance of the out-of-state hunting licenses—that to have a differential in the tipping fee, you have to justify it in some rationale other than you want to keep out the out-of- staters.

Senator McCONNELL. Of course. I am not suggesting that it be banned entirely or I would be here advocating just the ban. I think that one possible way to do it, although I didn't in my bill, is to cap the out-of-state fee. You could simply set the out-of-state fee at the same level it is in the State from which it comes. That way there would certainly be no discrimination.

Senator BREAUX. I think you hit on the key point. The problem is more than just saying no. The problem is more than just saying we're going to charge out-of-state shippers more than intrastate dumpers. The real heart of the problem is that we have closed two-thirds of the landfills in this country and we are generating 20 percent more waste each year. We have got to have a mechanism that will get the States to take care of their wastes either through recycling or landfills or incineration or shipping it through interstate compacts. We have to have a mechanism to force them to do what they, in fact, are not now doing.

Senator CHAFEE. That is right and that was the whole philosophy behind what we did in superfund, which was to force them to have these sites. Otherwise, we are just going to have midnight dumping.

Senator MCCONNELL. I am not suggesting, Senator Chafee, that this is an exclusive remedy. It might well marrying up with Senator Breaux's proposal.

Senator CHAFEE. I want to thank you, Senator McConnell, for your contribution too. I think you all have been very helpful.

Senator BAUCUS. Senator Warner has a question.

Senator WARNER. I want to put this in very specific terms where we are working an action by Congress which would give the State the right under the interstate commerce clause to just say no, but if I read through your proposal, Senator Breaux, you put as a condition preceding, as we say in the law, you must have a State plan. In effect, you're saying before you get the right to just say no, there are certain conditions that you must meet and one of them is a plan.

Senator BREAUX. That is absolutely correct.

Senator WARNER. You would set out uniformity criteria in that plan so all 50 States at least have to answer the questionnaire or fill in the statute or something or fill in the requirements.

Senator BREAUX. That is correct.

Senator WARNER. What about you, my distinguished friend from Kentucky? Do you put any limitation on the right just to say no through your fee approach?

Senator MCCONNELL. Well, I don't put a cap on the fee, although I am open to that as I just suggested. I think that would largely take care of part of the problem here. If you've got no financial advantage by shipping it from New Jersey to Kentucky, you wouldn't do it.

The more we sit here and talk, it seems to me that a good approach the committee might consider is the combination of both. Kentucky has already——

Senator WARNER. Let me go back to the question. Is there in your proposal a condition preceding to the right of a State to say no?

Senator MCCONNELL. There is not, but I can see that is a good idea. The reason that I didn't put it in my bill——

Senator WARNER. I'm not suggesting it because I lean towards the other.

Senator MCCONNELL. Well, I think it probably is a good idea to have some standards.

Senator WARNER. To put in a condition preceding?

Senator MCCONNELL. Yes. Kentucky could meet that because we have recently enacted one of the most stringent sets of landfill regulations in the country, so that wouldn't bother me.

Senator WARNER. In other words, a State could not sit out as an island unto itself and just say no, and not meet Senator Breaux's plan, your fee or something? In other words, it would have to do something to get the right to say no. That's my point.

Senator MCCONNELL. I think looking at it from a national point of view, that is a good idea.

Senator WARNER. Senator Coats, what is your approach?

Senator COATS. I don't have any precedent to the authority and the reason I don't is that because every plan that I have looked at that outlines a procedure generally takes from 3 to 5 years to have that plan written, approved, implemented, and so forth. In the meantime, the State is a continued dumping ground for trash and by the time the plan is in effect, I'm concerned that our landfills will be full.

I don't see why we should impose on the recipient States a higher burden of proof in order to control their destiny regarding trash than we are imposing on the shipping State.

Senator WARNER. Let's put it simply, yes or no, does your proposal require a condition precedent?

Senator COATS. No, sir.

Senator WARNER. So a State can start off day one under this law and just say no?

Senator COATS. My bill provides that the authority will become effective one year from the date of enactment. I did want to leave some room for States to react.

Senator WARNER. Mr. Chairman, I join others in our appreciation to our colleagues. This is an important question. To you, Senator Coats, I think it will achieve the highest degree of bipartisanship on this bill than we have seen in a long time around here.

Senator BAUCUS. Thank you, gentlemen.

Senator LAUTENBERG. Mr. Chairman, I had asked a question of Senator Coats and didn't get a response. It was on Gary, Indiana and a substandard——

Senator COATS. I have the answer to that. That has been closed.

Senator LAUTENBERG. Yes, because this newspaper article says Gary officials closed up or go to jail, June 5, 1990.

Senator COATS. They decided to close it.

Senator LAUTENBERG. That site was substandard?

Senator COATS. And it was closed as a result of that, so it is no longer operating.

Senator BAUCUS. I'd like to thank the panelists and thank each of the Senators for testifying today. As we can tell from the vast array of points of view from New Jersey to Indiana to Louisiana to Kentucky, and the various bills that have been introduced, this is not a simple issue and it is not one that is going to be solved immediately, and it is not going to be solved with some quick superficial solution.

It is the intention of the Chair of this subcommittee to come up with a solution that is not superficial but one that is very sensitive to the various different points of view of each of the 50 States and the Constitution.

I just want to caution observers so that they don't think this is going to be solved immediately on the floor of the United States Senate because it is complex, it is not a black and white issue, there are various shades of gray here, and if we are going to be exercising our responsibility in a responsible way, it is my intention that this committee find a solution that generally encourages States to adopt not only better standards but more uniform standards across the country so that as an economic matter, this problem of hauling trash across the country is less of a problem than it is today.

We have to have a good, fair and solid solution, not a quick fix.

Senator LAUTENBERG. I think you are absolutely right. It is a complex situation. It can be called, I think, a thousand points of light and we will have to solve the problem.

Senator BAUCUS. Now we have a panel of two very distinguished Governors. I'd like to welcome back Governor Florio, the Governor of New Jersey. I served with Governor Florio in the House. I admired him over there and I must say I admire him even more in the great heights he has ascended to and how well he has represented the State of New Jersey. I want to complement you, Governor, on the great job that you are doing.

Governor Bangerter, the Governor of the State of Utah, a fellow westerner, I am glad you are here.

Very often, I must say to both of you—I say this partly for the benefit of the Senator from New Jersey on the panel—whenever we get into State highway, Federal highway allocations, and speed limit matters, I remind the Senators from New Jersey—Senator Bradley and Senator Lautenberg—that the density of our States in the west is not at all similar to that of the States in the east, particularly the State of New Jersey and the reason why we in the west are less inclined to have State highway speed limits and the reason why we in the west need our State highway funds so desperately, even more compared with other States in the Nation, but Governors, we are very happy to have you here.

We will begin with you, Governor Florio.

STATEMENT OF HON. JAMES J. FLORIO, GOVERNOR, STATE OF NEW JERSEY

Governor FLORIO. Thank you very much, Mr. Chairman.

To the members of the committee, I am very pleased to be in a somewhat different situation than I have traditionally been in when I come before this committee.

In the interest of conserving the committee's time, I have a full statement that I'd like to place in the record with the committee's concurrence and I will try to summarize that statement so as to be able to conserve the committee's time.

The situation in New Jersey—Senator Lautenberg has been a leader along with Senator Bradley in attempting to address this problem—as well as in our country is one that is amazing simple and extremely complex all at the same time. What we are talking about is generating more wastes and at the same time we are running out of space to deal with it as we have traditionally dealt with it.

In New Jersey, I am very pleased and proud to say that we are tackling this problem in a very vigorous way. Frankly, if we are the leader in this effort, it is in large measure because we have no choice. We have to be the leader in dealing with a problem that requires a change from traditional practices, particularly traditional disposal practices.

To the risk of oversimplifying, there really are two major initiatives that have to be undertaken if we are going to deal with this multifaceted problem of solid waste disposal. First and foremost, and it's not the subject today but it should be dealt with, is waste reduction, a whole series of initiatives, tax policies, other types of policies that should be inducing the American people, American industry as well, to start reducing the overall volume of wastes. If we don't do that, we are going to be playing catch-up ball into the future and we'll never catch up, quite frankly.

The other part is I think related very much to what we are talking about today. That is this whole new industry that we have referred to as the recycling industry, the growth of this industry, private sector initiatives, coming forward with innovative ideas for finding new ways to use the components of our waste stream—newsprint, glass, aluminum, metal, plastic. The key is how is it that we are going to act in a way that will facilitate the development of this industry which will be the answer to the degree that there is any major answer to this problem? Certainly we do not want to do anything that would retard the development.

This amendment that is offered by my good friend and former colleague on the Commerce Committee over in the House, this amendment, in my opinion, will retard the development of that industry. The amendment from the gentleman effectively bans, and is very candid and very straightforward, the importing of solid waste.

The amendment is so broad that it does include recyclable materials as wastes, resources that depend upon interstate markets. As I have said, we need to encourage recycling, not discourage it. There is a growing sense of the need to be developing new types of facilities for recycling.

Senator Breaux, I think, made a very valuable point—there has also got to be some definitions as to what constitutes recycling. Lots of bad things have been done under the title of recycling facilities.

What I am suggesting to you is at the beginning of this whole new era, we do not want to be doing things that will be discouraging or making it more difficult for private business people especially to be making capital decisions about new, innovative ways to recycle. Some of you who may be involved in some of this know that the plastics industry is on the verge of a whole new way of dealing with plastics and recycling is a very important part of that.

Clearly if we are interested in recycling, we have to understand that the interstate nature of the commerce as an aspect of solid waste has to, not in any way, be detracted from. What we are seeing now is proposals to effectively interact or rather to stop the interflow of commerce. That is going to result in the wrong direction. It is going to be having us moving backwards. This is a national problem that requires a national response.

I am sympathetic to the concerns that I've heard here this morning from some of the witnesses. It is not a pleasant thing or a desirable thing to be seeing States pitted against each other, trying to close boundaries.

I was privy to some of the discussions about interstate commerce clauses and whether there should be an absolute ban on the capability from a State. Quite frankly, those were discussions that resolved in debates of the Articles of Confederation. We are talking about a national economy and we are talking about dealing with these problems on a national basis.

I was also struck by some of the discussion earlier that I heard from Senator Breaux and I think even Senator Chafee which made reference to the fact that maybe it would be a desirable thing to have each of the States have a solid waste management plan and that they should be somehow coordinated.

Gentlemen, I would just tell you that is not only a desirable thing, it is the law. If one goes back and looks through the Resource Conservation and Recovery Act of 1976, you will find in clear, unequivocal language the requirement that every State have a certified plan for the disposal of solid waste management and that every State's plan be approved by EPA. I don't know if you have EPA people coming here this morning but if you do, they will, if they are candid, and I suspect they will be, tell you that's the law right now. The problem is, of course, it's the law that nobody's paid attention to for a long period of time.

What is required then is an active coordinating role by the Federal Government to deal with this problem that certainly transcends State borders. This amendment, quite frankly, is a short term fix for a long term problem. The shortfall in landfill capacity has been apparent for years.

I will tell you New Jersey's experience. Ten years ago, we were a net importer of garbage coming out of New York, coming out of Philadelphia and in that period of time, as you all know, we are now a net exporter. If we don't deal with this problem in a more thoughtful way, I would suggest to the Senator from Indiana, ten years from now you may very well be a net exporter rather than be a net importer by virtue of landfill capacity being used up.

The question really comes down to whether we are going to draw walls around our States in a way that is not particularly thoughtful and is not in any way helping to resolve the long-term problem or are we going to start cooperatively working to form alternatives to traditional dumping practices? Obviously I am here to suggest the latter course of action and that we should be taking actions to facilitate, not retard, recycling activities. This amendment would cripple recycling and add to growing environmental problems.

Let me suggest a constructive, I believe, alternative and it echos some of the things you have heard here today. I am not opposed to the concept of differential pricing for out-of-state wastes. I would hasten to say though that I think that should be authorized when a State does have an EPA-approved solid waste plan. I happen to also think a component of that plan should say that recycling items—however we define, and that is going to take a lot of work—should be excluded from any type of differential pricing.

As a matter of fact, perversely now Federal tax policy has the wrong tilt on differential pricing. We provide for virgin materials preferential tax treatment to the exclusion of trying to build a climate for recyclable material. More has to be done at the federal level. EPA must start promoting recycling, EPA must prevent disruption of recycling by manufacturers, they have to help in creating markets and providing economic incentives, and, as I said, we have to stop subsidizing use of virgin raw materials.

Recycling is the answer but it is not going to happen overnight. There is a fundamental flaw in this amendment in that it really results in the ultimate policy being that we have 50 different policies to an area that really cries out for some national responsiveness.

I will conclude by sharing with you the New Jersey experience. I am now in the process of turning around 180 degrees. We have been pursuing policies wherein we say that the State Government is totally out of the process of dealing with solid waste. We have previously charged each of our 21 counties with coming up with their own solid waste system. The net result of that has been that we are on the verge—were on the verge until we reversed it, of siting 21 incinerators in our 21 counties—environmental folly and economic disaster.

There is no need to do that because we should be emphasizing recycling which is what we are doing. I would also say—I know this is not the gentleman's intent—but if one wanted to say how it was that you wanted to accelerate the incinerator industry, this type of amendment would be exactly the thing that you'd want to do.

In our own State, the argument against the 21 incinerators was that you'd never get around to recycling because the competition for the garbage flow to allow the incinerators to operate at maximum cost effective efficiency would enable all those incinerators to go out and charge higher for garbage and to provide for disincentives for recycling.

Whatever waste disposal options we choose have to be safe. I guess this is the last point I would suggest to you. We take great pride in New Jersey about being on the cutting edge of environmental initiatives. We have high standards for each and every component of our waste response capability, but that's not the case across the nation.

I found it somewhat humorous to listen to some of the questions earlier when there were people asking about adequate safety standards, whether something was subregulatory in terms of the limitations, even in terms of basic things like landfills. The humorous aspect of it is there are no standards. When you talk about a landfill, you could be talking about something that has a double composite liner with a leachate collection system and a groundwater monitoring well system, or you could be talking about a hole in the ground on top of an aquifer. You would be equally accurate in using the term because there are no standards that we have in this nation.

If you are going to hear from EPA people, they will tell you undoubtedly, and I say this without fear of contradiction, that they are on the verge of coming forward with sanitary landfill regulations. I can tell you that because the record is full of testimony before my committee when I was here for the last 10 years when they would come and testify that they are imminently about or on the verge of coming forward with sanitary landfill standards.

I would urge you, particularly in your oversight capability, to push and push and push to enable people to understand what we mean when we talk about these standards, whether it be air emissions from incinerators, or ash testing protocols, or sanitary landfill standards. Pollution doesn't know anything about borders. We need assistance, not roadblocks.

I would ask this committee to look for alternatives to the somewhat simplistic approach of the amendment that's being offered. I think it is out there. I think the people of this nation are ready to step up to the plate and deal with this problem because they know this is no longer only a major environmental problem, it is now getting to be an economic problem. Peoples' property taxes are going up because the costs of disposal is increasing astronomically. The times have never been riper for some thoughtful measures to address this problem. I hope that you provide that.

Thank you.

Senator BAUCUS. Thank you very much, Governor.

Governor Bangerter.

STATEMENT OF HON. NORMAN H. BANGERTER, GOVERNOR, STATE OF UTAH, ON BEHALF OF THE NATIONAL GOVERNORS ASSOCIATION

Governor BANGERTER. Thank you very much, Mr. Chairman. It is good to be here today.

I should clarify that I came to town for the purpose of meeting with the White House on highway funds, which you mentioned, and I also recall one of the last times I was here giving testimony was on the speed limit that you mentioned. I'd like to report that afternoon after I testified, you passed the bill. I hope that if we are successful in this testimony that you will move on the recommendations of the Governors as soon as I leave town.

I am here today representing the National Governors Association's position. Also, I have worked over the past months and years with the western governors on the waste disposal program. The focus of this hearing, obviously, is the interstate shipment of solid waste and that will be the basis of the remarks I will make today. I will try and keep those as short as possible skipping whatever I can.

Nationally, we all know there is a growing public consensus that a more aggressive approach to management of solid waste should be initiated to insure protection of public health and valuable natural resources. We concur with that. In Utah, we don't have the same kind of problems today that Governor Florio has in New Jersey, but that doesn't mean that we don't have our problems and are working hard to alleviate them.

It is particularly important as siting of new solid waste facilities becomes more difficult. This difficulty stems from several sources such as liabilities for owners and operators of landfills under the Federal Comprehensive Environment Response Compensation and Liability Act and increased demands for land use other than landfills, federal land management policies which discourage use of federal land for waste facilities.

In Utah, that is particularly a challenge for us because two-thirds of the land in Utah is owned by the Federal Government. We have had an instance in the past couple of years with a small county in an area with a lot of natural beauty having a great difficulty in obtaining a landfill site for a very small part of our State.

As a result, States have used various mechanisms to address waste disposal issues. Some States have attempted to develop the disposal capacity necessary to handle the waste generated within their borders, while others have adopted policies that assure wastes are transported out of State for disposal. I don't think that is a planned policy; I think it is a course of growth and smaller land areas.

This position has created a significant problem for States like Utah which find themselves in the unfortunate position of becoming an import State. We are an import State and obviously will continue to be. For example, based on data prepared for Utah's Capacity Insurance Plan in 1987, we exported 7,100 tons of hazardous wastes and received 71,000 tons of hazardous waste for treatment and disposal. That is a tenfold difference in the amount being sent from Utah and that being shipped in. This significant difference is projected to increase sharply in the near future due the construction and operation of a newly permitted commercial hazardous waste incinerator in the State.

A similar and equally alarming trend is expected to develop as new commercial solid waste landfills and medical waste incinerators are constructed.

Two years ago, we found ourselves in the position of having 11 commercial hazardous waste facilities, 3 commercial medical waste incinerators, and several commercial municipal and industrial waste facilities proposed for construction in the State of Utah. Each of these were relying on out-of-state generated waste to maintain commercial viability. Utah was on the verge of becoming or accused of becoming the dumping ground of the western United States.

We found that some of the exporting States had in fact created incentives for out-of-state disposal and had little or no concern for the resultant impacts in Utah. As the facility proposals increased, so did the concern of our citizens. During the 1990 legislative session, I recommended to the Legislature and worked with the leadership to address those concerns.

Legislation was passed that would limit the number of commercial waste facilities developed in Utah and assure proper permitting and compliance oversight for those that received construction approval. To accomplish this objective, a complex system of approval was created including local government, the State Division of Environmental Health, the EPA, and when necessary, the Governor; and finally, the Legislature. This procedure will be followed for each individual commercial facility prior to its construction.

We had on-line, as I said, several permits. Our legislation allowed those permits to move forward. We have granted one commercial hazardous waste incinerator permit. We will probably authorize one more before this year is out. One of these facilities at capacity will burn only 10 percent of its waste throughput from Utah and we will have two, so we will be in a position of taking out-of-state wastes at probably 20 to 1 that we generate in the State.

We also permitted, as a part of that legislation, a large landfill facility in central Utah which will accommodate and will be larger or as large as all of the landfills in the State of Utah now combined. This facility is designed almost entirely to receive out-of-state wastes.

We are in a position, we think, of doing our part, but our people, our legislature, and the Governor have said that it is enough and we are not going to continue to increase capacity for out-of-State wastes. So we will follow our new procedure in the future.

Another important aspect of the new law is the development of a disposal fee system for commercial facilities. This provision assured fees charged for out-of-State wastes were comparable to those in surrounding States and an economic advantage to disposing in Utah due to fee differentials with other States were minimized, but we are still a little low, frankly, in our fee system. The fee also provides sufficient revenues for regulatory oversight of such facilities and emergency response capabilities.

It is our position that Utah has a responsibility to assure disposal capacity for waste generated within our State. We have taken seriously the need for comprehensive, long-range solid waste management planning to occur at both the State and local levels. This will insure not only adequate disposal capacity, but appropriate waste minimization and recycling activities.

In addition, we have taken an active role in development of waste policies, disposal policies and plans in the western region. We are committed to doing our part. However, we believe that other States and the Federal Government must in turn do theirs if we are to solve this problem.

We have actively participated, as I indicated, in the NGA and the WGA waste management program and this report establishes four goals which the Governors believe are critical. First is to minimize the total amount of municipal solid waste requiring treatment or recycling. I don't think there is any disagreement on that. Second is to reverse the growth in per capita waste generation and reduce the toxicity of consumer products. The third is to aspire nationally over the long term to reach a recycling goal of 50 percent. Some are a little above that; some of us are way below that at this point in time. I think Utah is probably under 5 percent in the recycling to date.

Finally, and perhaps most importantly, each State alone or in cooperation with other States, should manage the waste produced within its borders. I'd like to emphasize that the interstate management of solid waste must be done in a cooperative effort and not by unilateral decisions or by export States to ship waste out of a State as the first and only solution to capacity shortages. We want to work with them, we are willing to do that, and I think we have demonstrated that.

It is my belief that in order to accomplish these goals and properly manage solid wastes, several things must occur. One, States must accept responsibility for the wastes generated within their borders and assure that disposal capacity is provided for that waste. Second, Congress should carefully consider allowing States to charge differential fees to assure that incentives to dispose of wastes out of state are minimized and to provide necessary oversight, resources and emergency response capability for these disposal facilities. This would require some waiver of interstate commerce provisions which apply to that disposal, as you've talked about today.

Third, solid waste management is an issue best addressed at the State and local levels. Federal requirements should build on State and local regulatory programs and permit structures. Any reauthorization and any subsequent regulations should establish a State-based approach for the protection of public health and the environment. Any congressional or federally-managed program of solid waste should take into account specific geographic and demographic positions which exist particularly in the west.

Fourth, it's critical the reauthorization includes specific language that defines the Federal role in solid waste management. The level of Federal oversight and management of solid waste must rely on State and local governments in leadership roles rather than imposing a process similar to that for the operation and oversight of hazardous waste regulation.

Fifth, State and local governments should conduct long range, comprehensive solid waste management planning to address the waste management issues in their jurisdictions. The EPA, as the sixth point, should provide the technical and financial support to State and local governments to insure that the States have sufficient resources to effectively implement any federal solid waste mandates.

Seventh, Congress should assure that the Federal land managers are required to work with State and local governments. This is particularly true, as I said, in the west where we have a lot of Federal land.

Solid waste management issues have in some areas reached crisis proportions. We accept that. It is imperative that they be addressed at all levels of government to assure protection of the public health, the environment, and valuable natural resources.

Thank you for letting me come here today and be with you.

Senator BAUCUS. Thank you, Governors.

I just have one very basic question. That is, I'd like to reaffirm the position I think you mentioned, Governor Bangerter, namely that over time States should themselves manage their own wastes that they produce. I take it that is the position of the National Governors' Association, and I take it too that is the position of you, Governor Florio?

Governor FLORIO. No, I don't have any difficulty with that, but it has to, of course, be done within a national framework. That is not speculative, that's under law.

Senator BAUCUS. Under RCRA, for example.

Governor BANGERTER. That is clearly the national policy and I think it is clearly the intent of the National Governors' Association that not be unilateral in every case, that we have a solid working relationship between the states to help mitigate problems outside of our borders, which we think we are doing.

Senator BAUCUS. Thank you.

Senator Lautenberg.

Senator LAUTENBERG. Governor Bangerter, does the National Governors' Association support bans on interstate transport of waste material?

Governor BANGERTER. I am not sure that the policy specifically imposes bans. It is aimed more at giving the States the authority to charge fees in relationship to what they think their costs are. In our case, for example, we have been significantly lower in our fee structure from California.

Senator LAUTENBERG. But the Association does not support just banning it at this juncture anyway?

Governor BANGERTER. I don't think they have said it in those terms. You could probably interpret the policy to say that but I think the Governors' Association is interested in a comprehensive solution with a great deal of State control over that solution.

Senator LAUTENBERG. Are you familiar, Governor, with New Jersey's efforts to develop a solid waste management plan?

Governor BANGERTER. Not specifically, but I've heard a lot about it here this morning and I know that the eastern States obviously have had a lot more pressure on themselves to develop those kinds of alternatives than we have in the west at this point.

Senator LAUTENBERG. Governor Florio and Mr. Chairman, I neglected to formally welcome, former Congressman Florio's, diligent efforts on behalf of a cleaner environment. He has continued to pursue those efforts as our State's chief executive. Although fairly new in the job, it's obvious that Governor Florio has attracted some attention with his very forward-looking programs, including those on the environment. We heard that articulated very clearly here today and I'm glad to welcome now Governor Florio to this panel.

When, Governor, will your task force issue its report and when will you be making a decision on the State's solid waste efforts?

Governor FLORIO. The task force that I commissioned, Senator, is required to provide its report back to me by the end of August. They have been working very, very forcefully. They have issued a preliminary report which has come forward, in accordance with my charge to them, to reverse the previous policies which almost had incinerators and sanitary landfills as the disposal mechanisms of first resource, saying that every county should be operating as a nation unto itself so to speak, saying that our State doesn't need that. We need a State approach.

The preliminary proposals have come forward with specific suggestions as to how to go about reducing waste, the volume of waste, and then with regard to recycling, has come forward with a goal to be achieved by 1995 of 60 percent of our wastes to be recycled. This is not some pie in the sky goal. We already have municipalities within our State that are recycling 50 percent of the trash. We have active source separation system in our State and many of our communities, and the existing law for mandatory recycling is charged with meeting 35 percent of our percentage and we are now going to be going beyond that.

Senator LAUTENBERG. One final question. Can you give us any idea, Governor, of when you think New Jersey might be relatively self-sufficient in the management of its solid waste programs?

Governor FLORIO. I think what I'd rather do, Senator, is to say that the goal should be cooperation and regional interaction and integration quite frankly because it may very well be—it's already occurring as part of a blossoming recycling industry—that in years ahead, we will be looking to tie up someone else's garbage stream or the components of someone else's garbage stream that are useful to us in our State or in someone else's State to facilitate the development of this very important area of commerce.

I don't start from the premise that we all want to be walled off in our own little cubbyhole as a State. It may very well be that economic and commercial necessity, as well as environment desirability, would move us in a direction for more regional cooperation which is the exact opposite of the thrust of what it is that is being talked about.

Senator **Lautenberg**. Mr. Chairman, I note that both Governors, though approaching the problem differently, support a comprehensive national approach to dealing with our waste problems. I congratulate each of them and thank them.

Senator **Baucus**. Thank you, Senator.

Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman.

Mr. Chairman, I must confess I am a little bit confused here. Governor Florio has stated that he doesn't believe there should be walls. I think he said no walls, but alternatives. Governor Bangerter has said he believes Utah should take care of its own waste and each state likewise. I'm just not sure what role for the Federal Government Governor Florio envisions.

Yes, I believe we can set standards for landfills. I think we can set standards for incinerator emissions. I think we can proceed to encourage waste reduction. We can go into encouraging labeling of plastics so that when you take different types of plastics into recycling, you will know plastic A goes here and plastic B goes there. We can encourage recycling by encouraging the developing of markets. Presumably newsprint, as you know, has become a plague in the market to considerable degree because there is no place to sell a lot of it. We can set targets for recycling.

All these things we can do but, it seems to me in the end that we've got to look to each state to handle its own or through some interstate agreement work out the handling of it, going right back to what we were talking about, and what Senator Breaux recommended, and what we have now in the superfund measure.

I don't think that we sitting up here, EPA or anybody can somehow come up with a master plan for the country that New Jersey will be recycling plastics and New York might handle newsprint or aluminum cans or whatever it is. All I think we can do is to set some standards.

You commented that there is nothing new in this business of asking for a plan because that's been in RCRA or required of EPA since the mid-1970s. The only problem is that there are no sanctions attached to it. If a state doesn't come up with a plan, so be it. Whereas in the superfund, there are sanctions. You don't get your superfund money, except for emergency responses, if you don't come up with a plan.

We could do the same thing, I suppose, requiring some kind of a plan from each state by saying you won't get highway funds or a portion of it, you won't get a portion of your waste treatment facility funds, but I just think there is a limited amount that we can do from up here as far as setting a national massive plan. We are dependent on the states.

Governor **Florio**. Senator, if I can respond. I don't have any difficulty in saying that I'm not interested in a national master plan that constitutes some sort of industrial policy for solid waste, if you are going to designate each state. That's micromanaging it far beyond what I think is desirable, but at the same time, I think it is fairly clear and, as I said, we made this argument 200 years ago, that every state cannot go off and do whatever it wants to do to the detriment of certain national policy considerations, certainly commerce.

If you wanted to, you can make the same arguments that were made 200 years ago today with regard to the recycling industry. What happens if a state decides that it wants to facilitate the development of this particular plastics recycling industry which is going to be a major component of one's commerce but it doesn't want those folks across the river to be able to take part in economic opportunities here, so they are going to say no. They can't do that.

Well, that runs counter to the whole concept of this being a nation. Again, I understand the political problems that everyone is talking about. All I'm suggesting is that if we are going to thoughtfully deal with those problems, it takes a little more sophistication than just erecting tariffs or barriers to interstate commerce. We've got to have a framework within which we induce, through EPA's roles, the states to collaborate for their own self interests. I just happen to think this is an area that first of all, is supposed to have been happening and you're correct, no one is complying with the law to any great degree, even though it is the law. One would have hoped the law would have been complied with because it is the law.

If it's in the interest of moving forward to have the law complied with, it may be that you have to start thinking about carrots and sticks to induce greater compliance with the requirement that every state have a plan—which is the law, subtitle D of RCRA. I saw all the staff people nodding their heads as I was making reference to that earlier on. It is there, the Federal Government is supposed to certify those plans and you all know that's not been done. It is a matter of inducing action to come into compliance with the law.

Governor **Bangerter**. Could I just make a comment that the position of the NGA is clearly that states ought to take care of their own problems and that they ought to cooperate with one another. I think in response to what Governor Florio has indicated, if he has a recycling plan, I don't think we would be here debating whether we had to send our material to them. I think the states would have that option to do that or not to do that.

I think that argues for the position the Governors have taken that we don't want to be forced to take things we don't want if we can work out another alternative. We agree that alternative needs to be worked out and we all need to participate in it.

Governor **Florio**. If I could just add one thing. The proposals we've heard for differential pricing in and of themselves can be part of the sanction process to induce the planning compliance. That is to say if you don't have a plan that is approved, differential pricing then is something that is legitimate.

Senator **Baucus**. Senator Moynihan.

Senator **Moynihan**. Thank you, Mr. Chairman.

A general point if I can to both of our distinguished governors to say that here in Washington and in Congress—Governor Florio will recognize this, I think—we are beginning to see an outbreak of regional conflict that is in the main to be ascribed to a great shortage of money. We have had a protracted fiscal crisis in every year, every program has to be cut. This has made the normal competitive relation, particularly in the Senate where States are represented. This has exacerbated and it is harder now. We get little things like this and it's going to take a sense of fellowship and of nationhood to keep us from doing some dumb things.

I would say to you, sir, not many weeks ago on the floor of the Senate, it was proposed by a Senator from Texas that the community development legislation which was designed for inner cities be put on a per capita basis and spread through his State. I had to rise to the floor—and I'm Chairman of the Committee on Water Resources and Transportation here—and say, well, perhaps water resource monies should be put on a per capita basis too. New York would do very well; we don't have many high level dams or things like that. In fact, we'd put an end to the program, and that we don't want.

Second, we also have true Constitutional issues here. As Governor Florio will note, the primacy of the Federal Government in these matters was settled by John Marshall in a case that involved steamboat monopoly that New York State gave to Robert Fulton between Manhattan and Albany but it went through New Jersey waters and had to be resolved.

I would feel very bad if the State of New York decided that the automobiles produced in Indiana were dirty and no dirty automobiles of Indiana could be brought into New York State. It would be rather a surprise, wouldn't it? I don't think the bill would pass here. It might pass in Albany and then what would we do? We would be back where we were in 1789 trying to get rid of that nonsense.

The last thing to say is that I think Governor Florio is absolutely right about this and I think Governor you'd agree, that what we see as a problem today may be an opportunity tomorrow. What we call waste is simply forms of matter which haven't been transformed into more useful ones. Matter is indestructible, it's all atoms and we might be surprised how quickly we learn that this is a natural resource or post natural resource that is in demand much less a source of friction.

Again, I think RCRA is a good place to address the matter. I agree with both the Governors and I appreciate their testimony.

Senator BAUCUS. Thank you very much, Senator, for your very excellent statement. I particularly would like to emphasize the basic point that we have to get along better together in this country.

I am reminded of Ben Franklin's warning 200 years ago that either we hang together or most assuredly we are going to hang separately. Frankly, I believe that some of the changes in world economic power and America's role in the world today have occurred in part because we have been hanging too much separately.

We as a Nation, we 50 States, in my judgment, if we are going to redress some of the adverse economic trends and some of the adverse political trends in the world, are going to have to buckle down more and work together better. That's not just among the

States, it's among all other groups in our nation. It's business, it's government, it's management and it's labor. We are going to have to work together better. There is no doubt the whole is bigger than the sum of the parts. Frankly I think the solution to this problem is one that, as the governors have said, lies much more in the area of cooperation or working together rather than if we are fighting each other in the States.

Thank you very much, Senator, for that contribution.

Governor BANGERTER. Senator, I am due to be at the White House in a short period of time, so if you will excuse me.

Senator COATS. Governor, I have a 30 second question for you if I may. Governor, just because the Senator from New Jersey, Senator Lautenberg raised a question, I think we got sort of a confused answer. I want to clarify the National Governors' Association policy based on the task force report on solid waste.

My reading of that is that it clearly indicates that each State should independently, if it wants, in voluntary cooperation with other States, handle its own wastes.

Governor BANGERTER. I don't think there is any question about that. As I said, I think it could be construed to mean, although I don't think it specifically says, that States will outlaw others but I think you could certainly draw that conclusion.

Senator COATS. I quote the report, it says, "It may be necessary to develop a process that will allow States to ban wastes from States that export excessive amounts of waste."

Governor BANGERTER. I'm just informed that what I said is correct, that the governors have not come out saying categorically we support banning.

Senator COATS. The Coats bill doesn't do that either.

Governor FLORIO. If the gentleman would yield. That is a task force to be submitted to a committee. I happen to serve on the National Governors' Association so the National Governors' Association has not even seen or reviewed, must less approved, the task force's somewhat ambiguous proposal.

Governor BANGERTER. I could say the western governors would certainly concur in that statement.

Senator BAUCUS. Thank you, Governors, very much. We appreciate your testimony.

Senator COATS. Governor Florio, if I could just clarify a couple of questions. The Coats' amendment is not designed to be a long term fix to all of our solid waste problems. I commend what you are doing in New Jersey. I appreciate very much your sterling environmental record as a member of Congress. I was privileged to serve on the same committee with you and you placed into law a number of significant pieces of legislation dealing with our problems.

The Coats' amendment is not intended to be a comprehensive fix. I have endorsed the process of bringing up RCRA, addressing these questions, and, in fact, the amendment that I had on the floor be married with a proposal the Chairman and I worked out. We are ready to bring that to a vote and that provided for comprehensive State plans and certification as part of the ban, but we were prohibited from going forward with that because your two Senators didn't think it was appropriate for us to do that at the time. We need to deal with comprehensive plans. The State of Indiana, I repeat, is doing this.

Relative to the incinerator question. It's not simply a question of saying we don't want the incinerators because that may be environmentally unsound, but what it seems to me New Jersey is saying is we don't want landfills either, and in the meantime while we are putting in place this ambitious plan to recycle all these goods, we are going to ship our problem to Indiana and then we will finally put in place this recyclable plan which will reduce the need to ship that amount.

My question to you is how would you feel if Indiana, which is basically enacting the same kind of plan that New Jersey is, ambitious goal of 50 percent recycling by the year 2000, perhaps not as accelerated as yours, how would you feel as Governor of New Jersey if we adopted the policies that New Jersey is adopting saying that we have a plan in place, we are environmentally conscious, we don't want incinerators either, we don't want to site any new landfills, therefore, we will ship all of our trash, hundreds of millions of tons of it, to New Jersey while we get our plan put in place. Wouldn't you want the authority to ban that Indiana trash coming into New Jersey?

Governor FLORIO. Let me respond to your question by correcting a couple of points.

We just got done siting and building some incinerators. We are in the process of sitting and building state-of-the-art landfills with far more protective features than anything that anybody in this country has talked about for solid waste landfills.

All I'm suggesting is that to meet the balance of what it is that is a multifaceted, environmentally sensible, economically sensible plan, we can't be taking away options for developing the source reduction and waste reduction initiatives as well as the recycling.

You are not going to be able to recycle if in fact you run pell-mell down the path of relying exclusively on incineration or to a large degree on incineration or solid waste. What we had to do was maintain maximum flexibility, and I would suggest to you in many instances, particularly in large States—the city of Philadelphia probably has more commonality with New Jersey for potential for shared facilities than they do with Pittsburgh on the other side of the State. All I want to do is maximize the flexibility to have the planning process move forward and not be closing any doors of opportunity.

Senator COATS. But my bill in no way prohibits that. It allows you as Governor of New Jersey to enter into agreements with the city of Philadelphia or even the State of Indiana, but we have to have some ability to stop the flow of massive amounts of trash from your State if we are ever going to fulfill our own responsibilities.

I have indicated earlier that I am willing to amend my bill to encourage recycling. In fact, I would argue that without the Coats' provision, it will not prohibit enhancement of recycling, it will allow us to do the opposite. It will give some States, not yours because you've taken a responsible position, the ability to say as long as we can cheaply ship west, why should we enter into a costly ambitious plan of recycling? It does cost a lot of money, it does take time to implement that.

As long as that option is to just put it on a truck, send it west and dump it cheaply somewhere else, I would argue that will detract from your ambitious and I think very laudable goal of waste reduction and waste recycling.

Governor **Florio**. Differential pricing premised on approved plan will achieve the same type of thing in a much more sensitive way.

Senator **Baucus**. Thank you very much, Governor, for giving us the benefit of your testimony.

Our second panel consists of Thomas Jorling, Commissioner; New York State Department of Environmental Protection; Ms. Lorie Parker, Director, Waste Transport and Disposal Project for Seattle, Washington; Allen Moore, President, National Solid Waste Management; and Ms. Velma Smith, Director, Groundwater Protection, Friends of the Earth.

Senator **Chafee**. Mr. Chairman, while they are getting seated, I just want to commend Mr. Jorling for having attracted to his service the State of Rhode Island's outstanding Director of the Department of Environmental Management, Mr. Robert Bendict. I always had a high opinion of Mr. Jorling but now it is even higher when he can go out and attract to his fold such leaders as he did in getting Bob Bendict.

Mr. **Jorling**. Thank you, Senator, and it was with some trepidation that I appear here this morning, knowing that we had raided Rhode Island. We look forward to Bob's service as he returns to his native New York.

Senator **Baucus**. Why don't you begin, Mr. Commissioner?

STATEMENT OF THOMAS C. JORLING, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. **Jorling**. Thank you, Mr. Chairman, and members of the committee, it is a pleasure to appear before the committee that is bringing to the people of the United States the Oil Pollution Act this year and also the Clean Air Act. Knowing that the committee is now turning its attention to the reauthorization of RCRA is indeed pleasant news to those of us in the States that are grappling with the issues of solid waste management.

I'd like to submit my prepared statement for the record and just make a few summary comments in the interest of conserving time.

Senator **Baucus**. The statements of all the witnesses will be included in the record. I will also note we have a 5-minute rule now for all witnesses.

Mr. **Jorling**. Let me just make a few points. First of all, to put the proposed legislation into the proper context, all of us in the United States are making a profound transformation from the wasteful, very deeply entrenched, throw-away habits of all previous human generations, to a recycling, conserving, sustainable solid waste system of management.

This transformation involves all levels of government, Federal and State, but in contrast to many other environmental issues, it involves the behavior of each and every citizen. Therefore, it is indeed a wrenching activity and it is one that we are trying to accomplish in a very short period of time.

We need to establish, in a comprehensive set of amendments to RCRA that Congress must enact, soon, some clear principles and goals and yes, mandates. Let me suggest a few themes. The first and fundamental obligation of government, Federal and State, is to assure that all activities involved in the management of wastes, such as transportation, transfer, recycling, and disposal, be conducted so as to protect the public health and the environment.

We think we have done this in New York but we desperately need a federal floor beneath us to assure that wherever a facility is built, it does not present any risk to health or welfare wherever it is located.

Second, we need a clear statement that each State should develop the capacity to manage all of the solid waste that is generated within that State either directly or through interstate agreements, as we are doing under Section 104 of CIRCLA for hazardous waste.

Another point: we must have established clear goals and mandates to move us to sustainable solid waste management. These must include reduction, reuse and recycling requirements of, I would argue, 50 percent as we have done in New York. We chose the date of 1997 to attain this requirement although the committee might have a different date.

We need to have, as we have in New York, mandatory source separation by all people in all communities and we need some federal prohibitions against the use of some materials in incineration. We also need to have codified at the Federal level a preferred hierarchy of techniques in the management of waste with waste to energy facilities and landfills being the least preferred technique.

We must recognize that the private sector must provide many of the management services that are necessary in this area, as long as they meet the minimum regulatory requirements and the goals that I have articulated. It is essential that we have high quality business practices in every sector of solid waste management so that we can prevent criminal involvement.

The Federal Government has a role. We desperately await that Federal role. In addition to the minimum requirements in the health and environmental areas that I suggested, it is essential that the Federal Government move in the areas that are most complicated or which involve interstate commerce issues. I would argue these include packaging, product standards governing chemical composition and R&D on technology of recycling, on technology of disposal, and on the technology of recovery methods.

For instance, in New York, our State legislature just adopted a prohibition on the use of four heavy metals in plastics materials. While we can do that in a limited way in New York, it would be much better done at the Federal level.

We should not erect barriers to the movement of waste independent of the overall context of RCRA. That would make a difficult task impossible. All elements of solid waste management, the planning, the regulation, the technology, must fit together in a comprehensive program that makes sense if we are to achieve ultimately the protection of health and environment, if we are to achieve fiscal prudence and soundness, and if we are to make the transformation to a recycling, conserving society.

Thank you, Mr. Chairman.

Senator **Baucus**. Thank you very much, Mr. Commissioner.

Ms. Parker.

STATEMENT OF LORIE PARKER, DIRECTOR, WASTE TRANSPORT AND DISPOSAL PROJECT, SEATTLE SOLID WASTE UTILITY

Ms. **Parker**. Senator Baucus and members of the committee, I am sure that I was invited to testify today because the City of Seattle is preparing to transport its waste by rail to an Oregon landfill just across the Columbia River from the State of Washington. How will we explain how we came to this decision and why we believe it is a good one, and then would like to discuss a few points in general about interstate transport of wastes.

The City of Seattle has learned about environmentally safe disposal the hard way. We have closed two landfills in the last few years, we are now closing them both as Super Fund sites, and they will cost us upwards of $90 million to close and our ratepayers, through the garbage rates, are paying for all of that closure. We know now what we must do to be safe about disposing of our waste.

Currently we are disposing of our waste at our local county landfill which has a limited life and which will never be able to be replaced in our county because of urban densities. In 1987, after closure of our landfills, Seattle began a thorough and comprehensive study of our options for managing the city's waste. We did a ten volume environmental impact statement and looked at 22 different kinds of recycling programs.

We looked at waste to energy plants, at different sizes, we looked at different locations for landfills and what we decided as a city was to set a recycling goal of 60 percent by 1998 and to dispose of our nonrecycled waste in the landfill east of the Cascade Mountains in the arid regions which are safer for disposal.

I brought a map which you have to look at because I had to carry it all the way across the country on the airplane which wasn't easy, to show you a little bit about sort of the geography that we are struggling with.

The City of Seattle is right on the water and to the west it is really impossible to landfill. It is very wetland sites, it is also the Olympic National Park and to the east, though you can't see the mountain range, it is very dry and a nonpopulated region which is much safer for landfills.

I am proud to say that in our decision to set a high recycling goal, we not only set that very high goal but we are well on our way to accomplishing it. We have adopted a comprehensive plan, we know exactly how we are going to get there, and we are well on our way, and are recognized for that nationally.

We charge our customers by the amount of waste they produce which encourages them to reduce and recycle. We collect newspaper, cardboard, mixed waste paper, glass, tin cans, aluminum cans, plastic bottles and yard wastes at curb. In addition, we collect other materials, more materials, at the transfer stations.

I tell you all of this to emphasize that we are doing all we can to reduce and recycle our waste stream before we dispose of it in our neighbor's back yard. So why are we proposing to take our wastes to Oregon for disposal? Landfills in the arid region present fewer environmental hazards than areas with more rainfall, little or no leachate and methane gas is produced at an arid site.

In recognizing this, the State of Washington which has very stringent landfill standards, has developed two sets of standards for the construction and operation of landfills with more stringent standards applied to western Washington where rainfall is substantially higher.

If we apply those standards to arid region, then we get even more protection. If we apply western Washington engineered protection to eastern arid sites, we are doubly protecting ourselves. That is what we have decided as a city to do. In addition, landfills in sparsely populated areas have a lower potential for land use conflict.

In 1989, in order to implement our decisions, the city issued a request for proposals for waste transport to and disposal at a landfill east of the Cascades. The city required all the proposers to meet the western Washington standards. We had three proposals, two in the State of Washington, both were just proposals and neither of the landfills had been developed, and one was a landfill that had already been developed in Oregon which, as you see, is about 6 miles south of the State line.

We looked at all of those proposals in an environmental and management way, and financial way and chose the site in Oregon. The reason we chose it was not just because of price but because we felt that particular site gave us the best environmental protection.

My main point I want to make to you today is not to circumscribe a government's ability to choose the best environmental site because political boundaries have nothing to do with that. We, in fact, have two potential sites, as you can see, that are really facing one another—one on one side of the State line and one on the other. We feel the one on the south side, on the Oregon side, is the one that gives us the best protection and that's why we chose it.

There are rationale reasons and I think this is the main one for allowing interstate transport of waste.

I'd also point out that there are reasons and rationale ways to deal with interstate transport of wastes and I would suggest the first, already suggested to you today, is that if the country as a whole through EPA had a baseline environmental standard, then States with lower environmental standards would not suck wastes into those States because it would be a baseline that everyone would have to comply with. In fact, Oregon is requiring recycling standards.

Senator BAUCUS. Thank you very much.

Mr. Moore.

STATEMENT OF ALLEN MOORE, PRESIDENT, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION

Mr. MOORE. Thank you, Mr. Chairman.

As you know, I represent the private waste services industry. Our 2500 members pick up, transport, recycle, incinerate, and bury both solid and hazardous waste. The public looks to our industry to do a dirty but important job—to get rid of the garbage.

We know a lot about how to do that, about what works and what doesn't work. We are deeply concerned about proposals to allow States to ban imports of municipal solid wastes whether directly or indirectly through discriminatory fees. We believe such bans would disrupt historical, logical and desirable arrangements for the management of the nation's wastes at a time of rapidly declining disposal capacity.

Bans present both environmental and economic risks, particularly to smaller and poorer communities. We understand and even share the anger over the export of massive quantities of waste from New York and New Jersey. We should not let that anger push us towards a policy that is contrary to the nation's long term interests. There is a solution to the New York and New Jersey problem, but it is not a ban on interstate movements of waste.

I want to share with the committee the results of a major effort that we have undertaken to determine the extent of interstate waste movements. First, I would just remind the committee of the two principal reasons that waste moves in interstate commerce.

First, and we've heard a lot about it today, is that it may make good sense. Over time natural waste sheds have developed in this country that reflect cooperation among people in a region on how to dispose of their wastes in the most efficient, safe and environmentally protective manner.

Sometimes the best answer is to send those wastes from one State to a recycling center or a waste-to-energy plant or a landfill in a neighboring or nearby State.

The second reason for interstate movement, a more recent phenomenon, is that disposal capacity is not available because the State has failed to make the hard decisions necessary to develop adequate capacity. This reason is primarily political although it is often exacerbated by other localized conditions, as we have also heard about today.

The generating States may well have suitable sites but they are not used, usually because of the nimby or "not-in-my-backyard" syndrome, so they export.

Let me turn to our data for a moment. Here is what we have done. The EPA had no information on interstate movements, so we went to 44 different States. Most of them don't collect such information and others had only limited data and tentative estimates. To supplement the States' information, we sought data from some of our members.

I tell you these things to point out that the information is not complete. I also think it is worth noting that the interstate movement of municipal waste has not been seen as an acute problem warranting the attention or resources of most States.

Now, please take a look at Tables 1 and 2 that appear at pages 15 through 21 of my statement. Those tables identify 99 different regular interactions between States that occurred during 1989. Of those 99, 74 were between contiguous States and eight more were between nearby but noncontiguous States. Thus, 83 percent of all these interactions were among States in traditional, regional waste sheds.

We find 30 States are both importers and exporters. We estimate that about 15 million tons of waste moves in interstate commerce, about 8 percent of the total. Of that, more than half, 53 percent, was exported from New York and New Jersey.

If you omit New York and New Jersey waste, we estimate that close to 90 percent of the remaining waste in interstate commerce moves between States in traditional regional waste sheds. We have some maps that show these relationships. I think if you look at Map 2, a map which excludes New York and New Jersey waste shipments, you will see an intricate web of transactions that represent complex and valuable relationships between the people of the various States. At least 80 separate relationships are involved. They have nothing to do with the New York and New Jersey problem.

What, if anything, should be done by the Congress at this point? That's the question. I hope I have helped the committee understands that there is a lot here that ought not to be disrupted. We believe that the correct goal must be to develop necessary management and disposal capacity nationwide. Federal law should require that all States site and permit sufficient disposal capacity in the immediate future.

If States like New York and New Jersey fail to do so and continue to be excessive net exporters, they should be sanctioned. How? Here is where bans might come in. Perhaps States with adequate and approved capacity should have the right to ban exports from a large net exporter that fails to develop its own capacity consistent with specified federal requirements. That, Mr. Chairman, is the only circumstance where we believe the public interest could be served through the use of a ban.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Mr. Moore.

Ms. Smith.

STATEMENT OF VELMA SMITH, DIRECTOR, GROUND WATER PROTECTION PROJECT, FRIENDS OF THE EARTH

Ms. SMITH. Mr. Chairman, as you mentioned earlier, there are citizens who live in communities for which waste is bound who are unhappy with the prospect of hosting large garbage facilities. These communities ask why they should share their neighborhoods with facilities which deal with the discards of other, often far away, communities.

Many communities composed primarily of low income or minority populations have concluded that they are being singled out in an insidious form of discrimination which sends the unwanted problems of the affluent into their backyards. Are these people simply uninformed, parochial? Is there any sound basis for wanting to keep major waste facilities out of your own backyard?

We think the answer to the latter question is unfortunately still yes. My written testimony provides the data taken from EPA itself that tells you why garbage facilities are not really very desirable neighbors.

In light of the types of problems which garbage facilities do and can present, in light of the great outpouring of citizen concern and increasing movement of garbage across State borders, Friends of the Earth supports a strong and quick response from Congress. We believe your response should be one which aims at curtailing drastically the interstate movement of garbage and dramatically shrinking the root cause of the problem, the generation of garbage in the first instance.

We are convinced that interstate movement of garbage is not in the best interest of the nation for a variety of reasons. First, it functions as a major disincentive to waste reduction. Some movement of garbage will always be required and, in some circumstances, be desirable and beneficial. We envision regional agreements being most beneficial, however, in circumstances where regional cooperation can be focused on the entire waste management spectrum from planning, reduction and recycling to disposal.

We are not convinced that cooperative planning can or should span hundreds of miles and many State boundaries. Long haul may be a way for railroads to increase their profit margins, but it is not, in our view, a way to promote environmentally responsible waste management.

In addition, we believe that we are seeing another troubling trend—garbage seeking the point of least resistance, or in this case, least regulation. My written testimony offers a perspective on South Dakota's overworked and overwhelmed regulatory infrastructure, for example, and I urge you to consider those statistics.

In addition, we believe you should consider as an example another State which has more than its share of garbage proposals, including what promoters have called a bold plan for the economic development of New Mexico to be realized by bringing a full quarter of the nation's garbage to the land of enchantment.

Is New Mexico particularly well suited for reviewing and regulating facilities? Absolutely not. There a small regulatory staff is handicapped by regulations which the regulators and the waste industry itself before this committee characterize as among the most outmoded in the United States. Landfills must be registered, they must have fences.

With virtually no effective restraints on interstate movement of garbage and without an effective federal presence in regulation, we would expect an escalation in the trend of garbage seeking homes of large spaces, low land values, overworked regulatory agencies, and poor crafted and weakly enforced environmental laws.

We also fear that the long haul transport of waste may appear to foster the development of megawaste facilities that may present environmental threats that are more significant than those found in smaller facilities.

Finally, we believe that current patterns in interstate movement are unsound simply because they are unfair. The imposition of waste management risks on communities which are far from the communities which reap the economic benefits associated with the waste generation is fundamentally inequitable.

On the other hand, Congress must be aware of drastic solutions forcing every community to immediately handle every bit of its own waste regardless of impact. As a matter of equity, this solution appears attractive; as a matter of environmental protection, we must recognize it has drawbacks.

There may be no site which is perfect for land disposal but there are sites which are particularly by sensitive and unsuitable, and they are not evenly distributed across the States. We should not adopt policies that force siting of disposal facilities in inappropriate areas.

Further, a sensible course of action may need to offer some exporting States a bit more time, not so that they will be allowed to send their discards elsewhere for decades or even years to come but so that they will be able to move quickly to wean themselves from dependence on other States.

I offer a few very quick suggestions. One, require EPA to develop a basic manifest system for tracking garbage movement.

Two, get serious on waste reduction. There's many bills languishing in Congress. Pick those up; take action now.

Three, require EPA to issue final rules for municipal solid waste disposal facilities now and empower EPA to take enforcement actions in States that don't do the job.

Immediately allow for States that would so choose to enact statutory waiting periods and moratoria on permit review of new facilities. A short term pause in permitting would allow for much needed planning and upgrading of regulatory programs.

Clarify that States may adopt differential tipping or other fees for out-of-state waste.

Act quickly to require all new facilities accepting out-of-state garbage to demonstrate financial responsibility not only for closure but also corrective action.

Explore ways to protect State enforcement action from commerce clause suits.

Provide funding to the States to upgrade their programs for RCRA subtitle D waste and set a time certain on a near term horizon—perhaps 2 to 5 years—when States with State solid waste plans that are meeting specific recycling and reduction goals will be able to adopt straightforward bans or other major impediments on the import of out-of-state waste.

If necessary, allow for imposition of lesser sanctions first, followed by an escalating severity of response to continued exports by other States. At the same time, Congress should act to protect those States such as Oregon which have already developed State plans incorporating a fair share concept of waste facility siting.

Finally, we also urge you not to adopt provisions which require any overrides of local zoning.

Senator BAUCUS. Do you agree with the State of Washington's plan to ship some of its garbage down to Oregon?

Ms. SMITH. I haven't specifically looked at that proposal and I wouldn't say that our organization is adamantly opposed to waste crossing a State boundary. It may, in this instance, make a sense. We haven't reviewed that but I think there are cases where it may make sense.

Senator BAUCUS. So you're saying in some cases, it may be appropriate for a State to have the authority to prohibit garbage from coming into its own State or enact discriminatory tipping fees, for example, in some cases?

Ms. SMITH. In some cases, I think that clearly would be true.

Senator BAUCUS. Do you think it would be appropriate public policy to condition the State's ability to effectively limit an another State's garbage on that importing State's development of a plan to handle its own garbage production, that is have adequate capacity, not necessarily requiring that State to dispose of all of its own garbage but at least have the capacity to dispose of all of its own garbage?

Ms. SMITH. As amplified in my testimony, I think the suggestions we give will offer you a mixed bag of things that wouldn't require a prerequisite action by a State in order to take some action because I think some States indeed face a crisis, not only that they are going to lose their capacity but their regulatory structure is totally overwhelmed and unable to deal——

Senator BAUCUS. Do you think a State should have the authority to ban outright regardless of any other condition?

I do think Congress should consider allowing States to do an outright ban and that the notion of a quid pro quo or a State requiring to do a prerequisite plan may be a reasonable idea. I would caution the Senators, however, that I think you should look carefully at what has and hasn't happened with the capacity assurance planning under the Superfund requirement and look realistically to make sure States are not put in a situation of forcing facilities into inappropriate places.

Senator BAUCUS. From the drift of what you have said, it sounds like that is a preferable option, that the ability of a State to ban be conditioned on the appropriate development of a plan to handle that State's garbage?

Ms. SMITH. I think for flat out bans, what we would propose the States have to have a solid waste plan that is meeting reduction and recycling goals.

Senator BAUCUS. Would anyone on the panel disagree with that conclusion? Yes, Mr. Moore?

Mr. MOORE. The only thing I would add to that is what I am suggesting is a double conditionality. That is, a State that would exercise special powers would first of all have to earn that right but I would also suggest that it could only exercise that right against those States which have failed to achieve some set of preconditions.

Senator BAUCUS. I'd like the other panelist' reactions to that second condition.

Ms. SMITH. I would just caution you that I think the Senators should look carefully. There is, for example, a proposal in one of the House reauthorization bills that supposedly sets up some prerequisites to having ban authority. I think some of the States think this may be the solution to their problems. It may in fact be a trojan horse and I think the Senate should consider the problems with the proposal.

Senator BAUCUS. What is your reaction to Mr. Moore's suggestion?

Ms. SMITH. I know we disagree because I do think States should be allowed to have differential permit fees right now.

Senator BAUCUS. Ms. Parker.

Ms. PARKER. We have been discussing this with Oregon and working with them so I don't think we are really terribly threatened by the fact they might have the authority. I would point out that there really are good environmental reasons to work regionally.

If States were to ban just because it was waste from someplace else, I don't think that's helping.

Senator **Baucus**. Do you agree with Mr. Moore's formulation that a State should have that authority so long as the two conditions are met?

Ms. **Parker**. Yes. I think both sides need to be working hard to manage their wastes.

Senator **Baucus**. Mr. Jorling.

Mr. **Jorling**. I think I would point to our implementation of the section 104 authority under CERCLA as the type of program that I think would make core sense in this area. That is each State should be required to show capacity to manage the waste it generates either directly with its own capacity or through interstate agreements.

New York has been certified as having adequate capacity, but only by relying on some of the capacity provided by the private sector. What we are doing with the capacity in the private sector is attaching conditions to permits to assure, for example, waste inputs come from States with waste reduction programs equivalent to the State of New York's; that the state of origin has equivalent health and environmental regulations, and that there is some host community benefit paid by the State of origin to the community which is receiving the waste or is the host of that facility.

What we are doing is to rationally relate our management of capacity to sound public policy purposes. When you make that rationale connection, I think it will survive constitutional muster. Certainly that's the case in CERCLA where if we don't manage our capacity properly, we suffer the loss of Superfund monies.

Senator **Baucus**. How quick do you think New York will have sufficient capacity to handle its own garbage?

Mr. **Jorling**. We are on an ambitious program to have that capacity in place by the turn of the century. That is an ambitious undertaking and obviously it is an ever-changing effort because capacity has a tendency to be used up. I think we will be self-sufficient in solid waste management by the turn of the century.

One thing that should be remembered is that the State of New York does not ship waste to Ohio or Pennsylvania. It is the marketplace that ships waste to Ohio and Pennsylvania. The marketplace is paying higher disposal prices to ship out of state. So we are facing the frustrating situation where NIMBY has caused New York to export its wealth with no return.

We think managing solid waste properly makes good economic sense as well as environmental sense. Many communities that have been shipping their waste to Ohio at $110 to $120 a ton are now saying that's silly; it's stupid; we should and we can manage our waste here within very strict environmental and health regulations if we site a necessary facility here.

Senator **Baucus**. Senator Lautenberg.

Senator **Lautenberg**. I don't hear anybody on this panel saying ban the trash because each one of you has knowledge of the fact that you just can't take that kind of unilateral action without simply putting up barricades to the functioning between the States.

High fees used exclusively to limit transport doesn't seem to be good public policy. It has to include the efforts of the importing State as well as the exporting State to deal sensibly with their trash problems. You are not, any of you, suggesting that an importing State ought to be permitted to operate at a lower environmental standard for landfills and then be able to ban another State's trash in order just to, say, use it politically which might even occur in some cases.

None of you are making that suggestion and I don't want to put words in your mouth. That's kind of a rhetorical question. Is anybody here saying fees ought not to include a consideration of the exporting State's attempts to deal with its solid waste problems or the ability to raise fees simply without consideration of the exporting State's attempt to manage its own solid waste problem?

Mr. JORLING. I think any fee should be rationally related to the cost of proper management and disposal. In my judgment, the fee should cover host community benefits, but I don't think fees should be used to do something unrelated to proper solid waste management or to restrict the flow of waste.

Let me ask the committee to address one issue we are grappling with in the context of the Superfund program on hazardous waste management. We've been negotiating now with several of our adjacent States that don't have any hazardous waste capacity concerning whether or not they should be able to use the capacity that's available in New York.

One of the questions we are asking is whether the law allows including other waste commodities in that quid pro quo negotiation with those States. For instance, should we accept hazardous waste from the State of X into a New York facility and as the quid pro quo, allow the export of solid waste to that State.

You might address that question of whether these negotiations between States under superfund, under CERCLA section 104, can include that kind of quid pro quo relationship?

Senator LAUTENBERG. I agree with that. Should we allow States to ban or limit interstate transport of garbage if that State has failed to adopt adequate solid waste management plans, the importing State? Should we allow the importing State to ban or limit interstate transportation of garbage if they fail to implement a strong recycling effort? Should they be allowed to limit or ban the transportation of solid waste garbage to their State if they haven't done the basics in their own State to control the environment?

Mr. JORLING. Are you asking whether the State that is receiving the waste should be able to regulate the flow into that State from a State that is not meeting reduction requirements in recycling?

Senator LAUTENBERG. No, whether within the State that's receiving the material, hasn't measured up to an environmental standard that we hope will be developed nationally for landfills?

Mr. JORLING. I don't believe the State should be able to implement a ban if the receiving State has an inadequate reduction or recycling program. I would caution that this is where the Federal Government needs to inject itself. Those States that receive waste must have protective environmental and public health standards. That is not the case now.

We can't reach other states. We can't tell the marketplace you can't send your waste to X State that has lesser landfill or waste energy requirements than the State of New York. The Federal Government must bring up the floor on those environmental and health protect——

Senator LAUTENBERG. We have already said the exporting States should have to meet some kind of standard in order to either regulate the size of the fee they've got to pay or their ability to simply transport that material. I assume you're all agreed on that, the exporting State has to meet some kind of standard or goal in its attempt to recycle, to manage solid waste before it is even allowed to move its materials.

I am not simply opposed to a ban. I'm opposed to a ban that doesn't take into account the ultimate objective of public policy dealing with solid waste management.

Mr. MOORE. We are in total agreement, Senator Lautenberg. I think what we were trying to show with our research and the maps is how many interactions have evolved historically, that they are logical, that they are protective, that they make economic sense, that they serve the best interests of the people in those particular regions.

I am not trying to pick on New York and New Jersey because I'm well aware of the reasons they are in the particular predicaments they are in. However I would venture to say that were they miraculously to have solved their problem yesterday, we wouldn't be here today. Yet my maps show there is an enormous amount of interstate movement. It's about 8 percent of the total, and most States are involved one way or the other. That has not historically been a problem. We are likely to move towards more of that as we move towards larger, more expensive, more protective facilities where waste sheds are growing and some increase is logical and likely, and I would say desirable. We have to work to avoid interfering with that evolution at this particular point in time.

Senator LAUTENBERG. We heard from Governor Florio about the possibility of economic opportunity, of the desirability to import materials that can be used in other ways effectively by an importing State.

Mr. Jorling, you said your objective would be the turn of the century for getting your solid waste management plans in place. I assume you include New York City in the whole of New York State when you make that kind of statement because we are very close to New York City and I watch the trash mountain grow meter by meter, foot by foot.

Senator BAUCUS. I would follow up on Mr. Moore's point that namely 8 percent of garbage in interstate shipment——

Mr. MOORE. That is our estimate.

Senator BAUCUS. The lion's share of that is between contiguous States, is that correct?

Mr. MOORE. Yes.

Senator BAUCUS. What percent would be long haul transport of the total that is interstate commerce?

Mr. MOORE. I wish I could answer that question.

Senator BAUCUS. Rough guess?

Mr. MOORE. When you consider that just over half of that comes from New York and New Jersey, most of your long haul is going to come from New York and New Jersey so half of 8 percent, that is 4 percent, comes from New York/New Jersey. Maybe Commissioner Jorling can tell us how much of that goes to Pennsylvania. I don't recall whether we have that figure. That's the principal recipient contiguous State.

I would venture to say that at least a third of that is ending up in Pennsylvania, maybe as much as half.

Mr. JORLING. I think one of the problems any of us have in tracking the movement of garbage is that there is almost a spot market in the movement of waste. The flow is very sensitive to changes in the marketplace, as you know from the New York City experience. The flow to various disposal sites can change quickly when tipping fees are adjusted.

Senator BAUCUS. Even though it's difficult, guess how much.

Mr. JORLING. We consider Ohio a contiguous State because it is only separated by about a 20 or 30 mile stretch of Pennsylvania. But between Ohio and Pennsylvania, I think that is where the bulk of Ohio waste is going. (Bulk means greater than 75 percent.)

Mr. MOORE. Starting with our data by deduction, I would cautiously estimate that somewhere between 1 and 2 percent of the nation's waste, coming from New York and New Jersey, is traveling beyond contiguous or nearby States.

Senator BAUCUS. What would your reaction be to allowing States to ban long haul interstate transport, not contiguous State immediately but say for all intents and purposes long haul?

Mr. MOORE. To the extent one can define it, I would still support the idea of conditionality. I might add that we are not necessarily opposed to the possibility of some fee differentials. One has to be very careful there because a high fee can become a ban by another name.

If you slap on a $100/ton fee, it is a prohibitively high fee. The true nature of the problem, and the reason we are here, is long haul. That's why I have attempted to focus attention on the States where the problem is. They are not bad actor States, they are just States with a unique set of difficulties and they need to be pushed aggressively.

Senator BAUCUS. Thank you. It's been a very helpful panel. Thank you for your patience.

The hearing is adjourned.

[Whereupon, at 1:07 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Statements and other material submitted for the record follow:]

STATEMENT OF SENATOR DAN COATS

SENATE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

JULY 18, 1990

OPENING STATEMENT

MR. CHAIRMAN: IMMEDIATELY AFTER MY ATTEMPT ON THE FLOOR OF THE SENATE TO GIVE STATES THE TOOLS TO COMBAT UNWANTED TRASH, AN ARTICLE APPEARED IN A FINANCIAL FIRM'S NEWSLETTER TO ADVISE INVESTORS ABOUT THE IMPLICATIONS FOR THE SOLID WASTE INDUSTRY. THAT PIECE PROJECTED THAT RESTRICTIONS ON INTERSTATE SHIPMENTS WERE BOTH IMMINENT AND INEVITABLE, IN AN ARTICLE ENTITLED, "NEAR MISS IN CIVIL WASTE WAR."

THAT TITLE CAUGHT MY ATTENTION. IT CAPTURES THE STRONG EMOTIONS OF SCORES OF COMMUNITIES AROUND THE COUNTRY WHICH ARE FORCED TO ACCEPT WASTE - OFTEN FROM HUNDREDS OF MILES AWAY - FROM STATES WHICH DO NOT TAKE CARE OF THEIR OWN TRASH. BUT THOSE WHO WANT LEGISLATIVE RELIEF ARE NOT STARTING THE WAR. THE BATTLE HAS BEEN GOING ON FOR YEARS IN COMMUNITIES AROUND THE NATION. SKIRMISHES FLARE EVERY TIME CITIZENS, LIKE THOSE IN THE BLUE RIDGE MOUNTAINS OF VIRGINIA, ARE FORCED TO PETITION THEIR STATE'S

ATTORNEY GENERAL TO FIND RELIEF FROM OUT-OF-STATE TRASH; EVERY TIME TRAINS LEAKING SLUDGE LANGUISH ON RAIL TRACKS IN LOUISIANA TOWNS; EVERY TIME GOVERNORS ARE FORCED TO RESORT TO TACTICS LIKE DIRECTING STATE TROOPERS TO HARRASS TRASH TRUCKS IN AN ATTEMPT TO STEM THE FLOW OF OUT-OF-STATE GARBAGE.

THERE IS A SMALL TOWN IN INDIANA WITH A POPULATION OF ABOUT 250 PEOPLE. UNTIL LAST YEAR, THE TOWN DUMP - RESIDENTS SAY THE TERM "LANDFILL" SEEMED A BIT OVERBLOWN FOR THEIR MODEST FACILITY - WAS VISITED BY NO MORE THAN A COUPLE OF TRUCKS EACH DAY CARRYING THE NEIGHBORHOOD TRASH. THEN THE SIZE OF THE TOWN DUMP WAS DOUBLED AND BOUGHT OUT BY OUT-OF-STATE INVESTORS. ADVERTISEMENTS BEGAN APPEARING IN NATIONAL MAGAZINES SAYING "SEND US YOUR TRASH". NOW, BETWEEN TWENTY FIVE AND FIFTY SEMIS WITH OUT-OF-STATE TAGS EACH DAY POUR THROUGH THE TOWN TEARING UP THE NARROW COUNTRY LANES AND REGULARLY KNOCKING OVER RESIDENTS FENCES AND SHRUBS. IN THE LAST YEAR, 6000 SEMIS HAVE DUMPED 240 MILLION POUNDS OF OTHER STATES TRASH IN CENTERPOINT, INDIANA.

EACH WEEK, SIXTY FIVE RESIDENTS OF THIS TOWN TAKE TURNS VOLUNTEERING LUNCH HOURS AND SACRIFICING VACATION DAYS TO PATROL THE LANDFILL. THESE CONCERNED AND COMMITTED CITIZENS HAVE FAITHFULLY RECORDED LICENSE PLATES AND REGISTRATION NUMBERS OF EVERY TRUCK DUMPING TRASH. THE PATROL IS ON DUTY EVERY HOUR THE LANDFILL OPERATES. YESTERDAY MARKED THE ONE YEAR ANNIVERSARY OF THEIR VIGIL. THEIR MESSAGE IS CLEAR. CENTERPOINT DOES NOT WANT TO BE A DUMPING GROUND FOR OTHER STATES' TRASH.

THE SIMPLE TRUTH IS THAT TENSION BETWEEN IMPORTING AND EXPORTING STATES EXISTS NOW AND IS GROWING. AND AS A REPRESENTATIVE OF AN IMPORTING STATE WE ARE FRUSTRATED WITH A SYSTEM THAT SEVERLY LIMITS OUR ABILITY TO PRESERVE OUR OWN LANDFILLS FOR OUR OWN NEEDS. TENSIONS DO NOT BEGIN WHEN STATES LIKE INDIANA STAND UP AND SAY "ENOUGH"; THEY BEGIN EVERY TIME A COMMUNITY LOADS UP A GARBAGE BARGE AND SENDS IT DOWN OUR NATION'S WATERWAYS WITH NO THOUGHT OR CONCERN ABOUT WHERE IT WILL END UP.

HOOSIERS ARE NO MORE ANXIOUS TO LIVE NEXT TO EAST COAST TRASH THAN THE RESIDENTS OF THE EAST COAST APPEAR TO BE. YET WE SUFFER FROM LEGISLATIVE NEGLIGENCE. BECAUSE THE CHEAPER AND MORE POLITICALLY POPULAR ALTERNATIVE OF OUT-OF-STATE DUMPING EXISTS FOR STATES, EXPORTERS HAVE VERY LITTLE INCENTIVE TO MAKE SERIOUS STRIDES TOWARDS TAKING CARE OF THEIR OWN WASTE.

I ASSURE YOU, IT IS NO MORE POPULAR TO SITE NEW LANDFILLS AND INCINERATORS IN INDIANA THAN IT IS IN NEW JERSEY. YET OUR CAPACITY CONTINUES TO BE CONSUMED AT A GROWING RATE BY OUT-OF-STATE TRASH, WHILE THE GOVERNOR OF THE LARGEST EXPORTING STATE IN THE NATION, WITH IMPUNITY, PLACES A MORATORIUM ON THE CONSTRUCTION OF ALL NEW WASTE-TO-ENERGY FACILITIES IN HIS STATE. THE ENVIRONMENT IN INDIANA IS EQUALLY AS IMPORTANT AS THE ENVIRONMENT IN NEW JERSEY. BUT OUR STATE WOULD BE HAULED TO COURT PROMPTLY IF WE PLACED A MORATORIUM ON THE DISPOSAL OF NEW JERSEY TRASH IN INDIANA UNTIL THAT STATE MADE SUBSTANTIAL PROGRESS IN DISPOSING OF ITS OWN REFUSE.

OUR CONCERN GROWS EVERY TIME WE READ REPORTS SUCH AS A RECENT ONE IN THE NEW YORK TIMES INDICATING THAT THE BIGGEST LANDFILL IN OUR NATION'S LARGEST CITY HAS DOUBLED ITS LIFE EXPECTANCY OVER NIGHT. IT DIDN'T GET ANY BIGGER. TECHNOLOGY DID NOT IMPROVE. IT IS OBVIOUSLY TAKING LESS TRASH. AND IT IS EQUALLY AS OBVIOUS WHERE IT IS GOING - TO DUMP SITES IN OTHER STATES.

IN FACT, SENDING THIS ROTTING CARGO OUT OF STATE IS OFTEN EASIER THAN DISPOSING OF IT IN ITS STATE OF ORIGIN. SOME OF THE LARGEST EXPORTING STATES HAVE ERECTED RIGID INTERNAL BARRIERS WHICH ARE FAR MORE PROTECTIONIST THAN ANY INTERSTATE BARRIERS THE COURTS WILL UPHOLD. OUR CURRENT SYSTEM HAS SPAWNED TREMENDOUS INEQUITIES AND IRONIES.

FOR EXAMPLE, NEW JERSEY, THROUGH STATE MANDATED SOLID WASTE DISTRICTS, IS EFFECTIVELY ABLE TO PRESERVE LANDFILL CAPACITY FOR RESIDENTS OF THOSE DISTRICTS. THE STATE UTILITY BOARD DETERMINES WHERE EACH COMMUNITY WILL DISPOSE ITS TRASH, AND INTRASTATE DISPOSAL IS STRICTLY PROHIBITED. THERE IS ONLY ONE STATE IN THE NATION WHICH CAN EFFECTIVELY PROTECT ITSELF FROM NEW JERSEY TRASH - AND THAT STATE IS NEW JERSEY.

THE STATE OF NEW JERSEY ALSO PAYS ITS COMMUNITIES WHICH HOST A LANDFILL. THESE FUNDS MAY BE USED TO MONITOR GROUNDWATER OR OFF-SET LOCAL TAXES AND CAN ADD UP TO MILLIONS OF DOLLARS OF ANNUAL REVENUE FOR A COMMUNITY. YET NO COMMUNITY IN INDIANA

RECEIVES FUNDS FROM THE STATE OF NEW JERSEY FOR DISPOSING ITS TRASH. OUR HOMEOWNERS FACE THE SAME DEPRESSION OF PROPERTY VALUES WHEN THEIR HOMES ADJOIN A LANDFILL, OUR COMMUNITIES PAY TO MAINTAIN ROADS WHICH SEMI-TRUCKS TEAR UP, OUR CITIZENS ARE JUST AS CONCERNED WITH GROUNDWATER MONITORING AND ENVIRONMENTAL PROTECTION AS OUR EAST COAST NEIGHBORS.

THE INTERSTATE TRASH PROBLEM ALSO IRONICALLY INHIBITS THE CREATION OF NEW LANDFILL SITES AT A TIME WHEN OUR NATION'S CAPACITY IS DIMINISHING. ACCORDING TO U.S. EPA ESTIMATES, THERE WERE 6,000 MUNICIPAL SOLID WASTE LANDFILLS IN 1986. BY 1992, THE AGENCY SAYS ABOUT 40% WILL CLOSE, AND WITHIN 15 YEARS APPROXIMATELY 75 PERCENT OF OUR NATION'S REMAINING LANDFILLS ARE EXPECTED TO SHUT DOWN.

BUT BECAUSE STATES HAVE BEEN SO OUTRAGED BY THE IMPORTING OF TRASH FROM OTHER STATES, THEY HAVE REACTED BY FORBIDDING ALL NEW LANDFILL SITES. THE STATES OF NEW MEXICO AND MISSISSIPPI WERE FORCED TO ENACT MORATORIUMS ON ALL NEW LANDFILLS, TO STALL PROJECTS WHOSE PRIMARY PURPOSE WAS TO ACCEPT OUT-OF-STATE TRASH. STATES ARE BEING FORCED TO TAKE SEVERE MEASURES, WHICH OFTEN RUN COUNTER TO REGIONAL NEEDS, TO LIMIT THEIR EXPOSURE TO OUT-OF-STATE TRASH.

THESE MEASURES INCLUDE WHAT AMOUNTS TO THE "NATIONALIZATION" OF THE TRASH INDUSTRY IN SOME STATES. FOR INSTANCE, IN THE STATE OF MAINE, FOR-PROFIT TRASH DISPOSAL FACILITIES HAVE RECENTLY BEEN

BANNED. BECAUSE PUBLIC SECTOR FACILITIES MAY DISCRIMINATE BETWEEN IN STATE AND OUT-OF-STATE WASTE, ONE METHOD OF ELIMINATING UNWANTED TRASH IS SEVERELY RESTRICTING THE COMMERCIAL SECTOR ALTOGETHER. IF CONGRESS FAILS TO ADDRESS THE INTERSTATE TRASH PROBLEM, WE WILL END UP, IRONICALLY, WITH A SYSTEM THAT IS FAR MORE DESTRUCTIVE TO COMMERCE THAN WOULD BE THE CASE IF WE WAIVE THE COMMERCE CLAUSE.

STATES ARE ACTING NOW TO ADDRESS A PROBLEM WHICH THE CONGRESS HAS SO FAR IGNORED. THE STATES HAVE LEGITIMATE AND PRESSING NEEDS TO PRESERVE DIMINISHING CAPACITY FOR THEIR OWN CITIZENS. BUT THEIR ABILITY TO EFFECTIVELY ACT IS EXTREMELY LIMITED. FOR INSTANCE, IN MY OWN STATE OF INDIANA, WE HAVE ABOUT 6 TO 8 YEARS OF REMAINING LANDFILL CAPACITY. WE HAVE RECENTLY ENACTED AMBITIOUS RECYCLING GOALS TO PROTECT OUR ENVIRONMENT AND PRESERVE OUR LANDFILL SPACE. BUT OUR GAINS ARE BEING SEVERELY UNDERMINED BY OUT-OF-STATE TRASH.

MERELY TWO YEARS AGO, THE AMOUNT OF OUT-OF-STATE WASTE WE DISPOSED OF IN INDIANA WAS NEGLIGIBLE. TODAY, OUR DEPARTMENT OF ENVIRONMENTAL MANAGEMENT ESTIMATES THAT BETWEEN TWENTY AND THIRTY PERCENT OF ALL THE TRASH WE DISPOSE OF IS FROM OUT-OF-STATE SOURCES. WE SHIP NO MORE THAN 2 PERCENT OF OUR TRASH ACROSS STATE LINES, AND THIS PRIMARILY TO CONTIGUOUS COUNTIES. WHAT INCENTIVES DO HOOSIERS HAVE TO BE RESPONSIBLE IF THEIR ONLY REWARD IS TO BE A DUMPING GROUND FOR OTHER STATES? THIS RISING TIDE OF TRASH IS WREAKING HAVOC WITH STATE PLANNING EFFORTS AND

CREATING DEEP RESENTMENT AMONG OUR LOCAL PLANNING DISTRICTS WHICH BY STATE LAW MUST ENSURE ADEQUATE LOCAL CAPACITY FOR TWENTY YEARS.

THE INDIANA STATE LEGISLATURE ACTED THIS SPRING TO BEGIN TO ADDRESS THESE ISSUES. WE PASSED A LAW REQUIRING THAT ANY WASTE ENTERING OUR STATE FROM ANOTHER HAVE CERTIFICATION THAT IT DOES NOT CONTAIN HAZARDOUS OR MEDICAL INFECTIOUS WASTE. SECOND, WE REQUIRED A STATEMENT INDICATING THE ORIGIN OF THE TRASH. THIRD, WE SOUGHT TO ESTABLISH A DIFFERENTIAL FEE SYSTEM SO THAT LOCALITIES RESPONSIBLE FOR ENVIRONMENTAL MONITORING WOULD NOT HAVE TO ABSORB THE COSTS OF OUT-OF-STATE TRASH DISPOSAL. THE STATUTE WAS ON THE BOOKS FOR ONLY FOUR DAYS BEFORE BEING CHALLENGED IN THE COURTS AS A VIOLATION OF THE COMMERCE CLAUSE OF THE CONSTITUTION.

WE HAVE CREATED A SYSTEM WHICH PENALIZES STATES THAT HAVE MUSTERED THE POLITICAL WILL TO HANDLE THEIR OWN WASTE DISPOSAL NEEDS, BUT STILL PROVIDES NO PENALTIES FOR EXPORTING STATES WHICH DRAG THEIR FEET ON DEALING WITH THEIR OWN RUBBISH. THIS IS NOT A CASE OF INDIANA CRYING "NOT IN MY BACKYARD". WE ARE TAKING CARE OF THE TRASH GENERATED IN OUR STATE. RATHER, IT IS A PLEA FOR EACH COMMUNITY, EACH STATE, TO BE RESPONSIBLE FOR THE ENVIRONMENT AND ACCOUNTABLE FOR THE TRASH WE GENERATE.

I URGE MY COLLEAGUES ON THIS COMMITTEE TO MAKE A STRONG AND UNEQUIVOCAL STATEMENT: EACH STATE, EITHER

INDEPENDENTLY, OR THROUGH MUTUAL COOPERATION WITH ANOTHER STATE, MUST TAKE CARE OF ITS OWN GARBAGE.

THE ONLY REALISTIC WAY TO MEET THIS GOAL IS TO SEVERELY LIMIT THE ALTERNATIVES FOR EXPORTING STATES. I AM CONVINCED THAT THE TRASH CRISIS IN THE NORTHEAST IS AS MUCH A FAILURE OF POLITICAL WILL AS IT IS AN INABILITY TO SAFELY FIND NEW LANDFILL SITES. IN 1986 AND 1987, 83 LANDFILLS CLOSED IN NEW YORK STATE. THREE LANDFILLS OPENED. NEW JERSEY EXPORTS BETWEEN 55 AND 65 PERCENT OF ALL ITS GARBAGE, YET THE STATE'S ATTEMPT TO DEVELOP A REGIONAL LANDFILL THREE YEARS AGO WAS DEFEATED BY THE NEW JERSEY CONGRESSIONAL DELEGATION. TODAY, ITS COUNTIES, TASKED BY STATE LAW TO PLAN FOR ADDITIONAL CAPACITY, FIND THEIR ATTEMPTS TO SITE WASTE-TO-ENERGY FACILITIES DELAYED BY THE GOVERNOR.

CONGRESS, I BELIEVE, SHOULD AUTHORIZE STATES TO LEVY FEES AGAINST OUT-OF-STATE TRASH. SUCH A FEE SYSTEM WOULD MINIMIZE THE ECONOMIC INCENTIVE TO EXPORT, BY EQUALIZING DISPOSAL COSTS BETWEEN REGIONS OF THE COUNTRY.

SHOULD THIS ECONOMIC BARRIER FAIL TO SIGNIFICANTLY CONTROL THE TIDE OF OUT-OF-STATE TRASH, STATES SHOULD BE GIVEN THE OPTION OF IMPOSING A BAN ON TRASH FROM EXPORTING STATES.

FINALLY, I RECOGNIZE THAT EFFICIENT TRASH MANAGEMENT WILL NOT ALWAYS RESPECT POLITICAL BOUNDARIES. MOST STATES NEED TO DO

SOME EXPORTING WITH CLOSE NEIGHBORS. REGIONAL COOPERATION SHOULD BE ENCOURAGED.

I HAVE INTRODUCED LEGISLATION WHICH AUTHORIZES STATES TO TAKE CONCRETE MEASURES TO PRESERVE ITS CAPACITY AND COMBAT UNWANTED TRASH. I WANT TO STRESS THAT MY BILL DOES NOT MANDATE THAT A STATE TAKE ANY ACTION AT ALL - IT SIMPLY ENHANCES THEIR ABILITY TO EFFECTIVELY MANAGE SOLID WASTE FLOWS. UNDER MY LEGISLATION, STATES WOULD BE ABLE TO ENACT A DIFFERENTIAL FEE SYSTEM. IF SUCH A SYSTEM IS NOT EFFECTIVE, IT WOULD RESERVE THE RIGHT FOR STATES TO BAN OUT-OF-STATE SHIPMENTS.

THIS CONGRESS, THIS COMMITTEE HAS DEMONSTRATED A STRONG COMMITMENT TO PROTECT OUR ENVIRONMENT. YOU HAVE ENCOURAGED THE SENATE TO ADOPT LANDMARK CLEAN AIR LEGISLATION. DURING THE COURSE OF THAT DEBATE, YOU CLEARLY DEMONSTRATED YOUR PREFERENCE FOR A SIMPLE PRINCIPLE. BY REJECTING ARGUMENTS FOR COST SHARING, YOU MADE IT CLEAR THAT EACH REGION OF THE NATION WOULD BE RESPONSIBLE FOR BEARING THE BURDEN OF CLEANING UP THE ENVIRONMENTAL PROBLEMS ORIGINATING THERE. THE MIDWEST IS SHOULDERING ITS RESPONSIBILITIES FOR CLEANER AIR AT A COST. WE SIMPLY ASK FOR EQUAL CONSIDERATION AND FAIR PLAY. LET THE EAST COAST TAKE CARE OF ITS OWN GARBAGE.

STATEMENT BY SENATOR MITCH MCCONNELL

BEFORE

THE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

JULY 18, 1990

Mr. Chairman, distinguished members of the Subcommittee on Environmental Protection, I thank you for holding this timely hearing on an extremely pressing issue for my state: the interstate transportation of municipal solid waste. I also appreciate the opportunity to testify before you subcommittee today on legislation I have introduced to address this issue.

Mr. Chairman, at the national level, solid waste management is an important and pressing issue. At the state level, however, it is a crisis issue. Shrinking landfill capacity, public opposition to new landfills, groundwater contamination, and lack of funding to upgrade and modernize landfills are big problems. The inability to regulate or control out of state waste makes the problem almost untenable for states like mine.

Last year, almost a half-million tons of out of state waste wound up in landfills in my state. This year, new dumps are planned which will import garbage in amounts that will double or triple waste coming into my state. Indeed, many of my constituents are concerned, and rightly so, that Kentucky is rapidly becoming the Garbage Barge of America.

Out of state waste is costing Kentuckians in the form of road wear, loss of landfill capacity, visual pollution, odor, and groundwater contamination. These costs, Mr. Chairman, are borne by Kentuckians, not by the people generating the waste.

As we all know, the interstate transportation of garbage is currently regulated by the federal government. However, given the problems with this arrangement, establishing a national policy which gives states immediate and complete control over out-of-state garbage is an idea whose time has come.

As you know, I recently introduced legislation to do so. The "Solid Waste Treatment and Disposition Fee Act of 1990" gives states the authority to discriminate between in state and out of state garbage and to impose higher fees on out-of-state garbage. It also sets up a registration system and creates a solid waste data base.

If other states want to send their garbage to Kentucky, my bill ensures that the residents of those states, and not Kentuckians, pay the true price of disposing of it. My bill deals with the issue of fairness, Mr. Chairman. If it costs $150 per ton for the residents of state A to dump garbage within their borders, why should state B have to accept that waste for less than $150 per ton?

My bill does not grant states authority to ban waste because I am not convinced that an immediate ban on the interstate transportation of our nation's waste is in the country's best interest. Indeed, some interstate transportation of waste is probably necessary if we are to deal with this issue on a national basis. My bill does, however, grant immediate authority to impose fees on such waste and help states recoup the costs of accepting such waste.

My bill exempts facilities importing waste solely for the purpose of recycling. Although not expressly stated in my bill, it is not my intent to interfere with companies shipping waste among facilities located in different states for in-house treatment. Also, my bill is not intended to interfere with existing or planned interstate waste compacts. These compacts are good and necessary vehicles to help states deal with waste.

Mr. Chairman, some counties may find it economically attractive to have selected landfills import garbage. Recognizing this fact, my bill provides flexibility to the states to structure the fee so that it is appropriate for the particular situation existing in each state.

My bill creates a useful revenue source for counties or states. Revenues can be used to offset road wear, make landfills safer by helping landfill operators meet new, more stringent landfill regulations, lower the county's tax rate, or create a trust fund to be used to mitigate environmental contamination from the landfill.

As I noted earlier, I do not think an immediate ban on out of state garbage by all the states would be good national policy. However, a ban might be appropriate if it were authorized after giving the exporting states a period of time in which to get their houses in order through recycling, waste reduction, and better landfill-capacity management.

I recognize the concerns my friends from New Jersey and New York have with bills that authorize an immediate, outright ban. However, whether we authorize an immediate fee only or whether we authorize an immediate fee and then a ban after a certain period of time, Kentucky needs immediate relief. That is why I proposed my bill. It is, I believe, a reasonable and fair approach to address the problem in my state without putting exporting states in a position of not being able to export their waste.

As I've said before, I am attempting help states handle an immediate problem: out of state waste. I recognize my bill is not a total solution to the nation's garbage crisis, nor is it intended as such. The federal and state governments must continue to work together to develop a responsible, comprehensive strategy which combines source reduction, recycling, combustion, and landfilling. In the meantime, my bill will provide immediate relief to states and give them some breathing room to get their own waste management problems under control.

Again, I thank you Mr. Chairman and the members of this Committee for holding these hearings. I trust that, after a complete airing of this issue, we will all recognize the need to move forward towards a policy of state control of out of state solid waste and be ready to do so.

TESTIMONY OF GOVERNOR JIM FLORIO

BEFORE THE U.S. SENATE SUBCOMMITTEE ON

ENVIRONMENTAL PROTECTION

JULY 18, 1990

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS A PLEASURE TO BE HERE. I APPRECIATE THE OPPORTUNITY TO TESTIFY ABOUT SOLID WASTE PROBLEMS NATIONALLY, BECAUSE NEW JERSEY IS CURRENTLY ADDRESSING PROBLEMS THAT THE REST OF THE COUNTRY WILL FACE IN THE NEXT DECADE.

THE SITUATION IN BOTH NEW JERSEY AND THE REST OF THE COUNTRY, IS AT THE SAME TIME AMAZINGLY SIMPLE AND DEVILISHLY COMPLEX: WE GENERATE MORE WASTE, AND WE'RE RUNNING OUT OF PLACES TO PUT IT. WE HAVE JUST ACTED AS IF THE CRISIS DID NOT EXIST. THAT CAN'T CONTINUE.

IN NEW JERSEY, WE'VE STARTED TO TACKLE THE PROBLEM. SHORTLY AFTER I TOOK OFFICE IN JANUARY, I APPOINTED A TASK FORCE TO RECOMMEND WAYS WE CAN DRAMATICALLY INCREASE RECYCLING. I HAVE SAID IN THE PAST WE CAN RECYCLE 50 PERCENT OF OUR WASTE. MANY MUNICIPALITIES IN NEW JERSEY ALREADY DO SO. THE PRELIMINARY REPORT OF THE TASK FORCE SUGGESTS WE CAN REACH 60 PERCENT. I LOOK FORWARD TO LEADING NEW JERSEY TO REACH THAT GOAL -- THE HIGHEST IN THE NATION.

IF NEW JERSEY IS A LEADER IN THESE EFFORTS, IT'S BECAUSE WE HAD TO BE. FOR ECONOMIC AND ENVIRONMENTAL REASONS, LANDFILLS AND UNLIMITED BUILDING OF INCINERATORS ARE NO LONGER OPTIONS. THE

SHEER VOLUME OF SOLID WASTE WE NOW FACE PROVES THAT WHAT WORKED IN THE PAST WILL NOT SERVE THE FUTURE.

NECESSITY FORCES ACTION, BUT IT'S ALSO THE MOTHER OF INVENTION. THE SOLID WASTE CRISIS IS SPAWNING NEW COMPANIES EVERY DAY, WITH INNOVATIVE IDEAS FOR FINDING NEW WAYS TO USE OLD NEWSPRINT, GLASS, ALUMINUM, METAL AND PLASTIC.

BUT EVEN AS WE BEGIN TO MAKE THE DIFFICULT DECISIONS THAT WILL BRING SENSIBLE METHODS TO DISPOSE OF GARBAGE, THE PATH IS PAVED WITH OBSTACLES. ONE OF THEM IS THE AMENDMENT PROPOSED BY THE SENATOR FROM INDIANA.

THE AMENDMENT PROPOSES TO CHANGE FEDERAL LAW BY ALLOWING STATES EFFECTIVELY TO BAN THE IMPORTING OF SOLID WASTE, WITH NO EXCEPTIONS. STATES COULD KEEP OUT RECYCLABLES FOR ANY REASON. THIS WOULD UNDERMINE NEW JERSEY'S EFFORTS -- AND THOSE OF OTHER STATES ACROSS THE COUNTRY -- TO DISPOSE OF SOLID WASTE SENSIBLY. IT WOULD DISCOURAGE AND LIMIT EFFORTS TO RECYCLE AND COMPOST. IT WOULD FORCE DENSELY POPULATED STATES TO RELY ON THE LEAST ENVIRONMENTALLY DESIRABLE ALTERNATIVES, SUCH AS INCINERATORS.

A MAJOR PROBLEM IS THAT THE AMENDMENT IS SO BROAD THAT IT INCLUDES RECYCLABLE MATERIALS AS WASTE -- VALUABLE RESOURCES THAT DEPEND ON INTERSTATE MARKETS. TODAY, MORE THAN EVER, WE NEED TO ENCOURAGE RECYCLING AND A FREE FLOW OF INTERSTATE COMMERCE THAT'S VITAL TO THE RECYCLING INDUSTRY. IF A STATE CAN STOP THE FLOW OF

THESE ITEMS, IT CAN DESTROY A GROWING INDUSTRY THAT BECOMES MORE ESSENTIAL TO OUR ENVIRONMENTAL AND ECONOMIC HEALTH EVERY YEAR.

FOR EXAMPLE, A STATE COULD KEEP OUT OLD NEWSPAPERS, SIMPLY TO RAISE THE PRICE PAID FOR IN-STATE OLD NEWSPAPERS. A PAPER MILL USING OLD NEWSPAPERS WOULD BE HARMED, AND RECYCLING EFFORTS WOULD BE SERIOUSLY UNDERMINED.

A STATE COULD DETERMINE THAT IT WANTED TO ELIMINATE A FACILITY THAT RECYCLED GLASS OR PLASTIC BOTTLES, AND IT COULD DO SO SIMPLY BY DRIVING UP THE COST OF THE RAW MATERIALS FROM OUT OF STATE.

BY FAILING TO RECOGNIZE THIS AS AN INTERSTATE CONCERN, THE AMENDMENT COMPOUNDS THE PROBLEM BY ALLOWING EACH STATE TO DETERMINE WHAT IT BELIEVES IS BEST FOR THE NATION. THAT'S BACKWARDS. IT'S A CALL TO CHAOS AT A TIME WHEN WE MOST NEED LEADERSHIP AT THE NATIONAL LEVEL. IN THE END, GARBAGE IS A NATIONAL PROBLEM THAT REQUIRES SERIOUS FEDERAL INVOLVEMENT. UNFORTUNATELY, THERE HAS BEEN NO LEADERSHIP FROM THE ENVIRONMENTAL PROTECTION AGENCY IN WASHINGTON, AND TOO LITTLE AT THE STATE LEVEL.

THE AMENDMENT IS A SHORT-TERM FIX FOR A LONG-TERM PROBLEM. A SHORTFALL IN LANDFILL CAPACITY HAS BEEN APPARENT FOR YEARS. IN DENSELY POPULATED STATES SUCH AS NEW JERSEY, THE PROBLEM IS SEVERE.

I SHOULD POINT OUT THAT NEW JERSEY HAS NOT ALWAYS BEEN A GARBAGE EXPORTER. IN THE PAST TWO DECADES, NEW JERSEY HAS ACCEPTED VAST QUANTITIES OF SOLID WASTE FROM OTHER STATES. FROM 1980 TO 1982, PENNSYLVANIA SENT MORE THAN NINE MILLION TONS OF GARBAGE TO NEW JERSEY. NEW YORK STATE EXPORTED AN ADDITIONAL TWO MILLION TONS TO NEW JERSEY. THOSE OUT OF STATE TOTALS AMOUNTED TO NEARLY ONE-QUARTER OF ALL GARBAGE DUMPED IN OUR STATE'S LANDFILLS DURING THE EARLY 1980'S. DURING THE 1970'S, NEW JERSEY ACCEPTED TENS OF MILLIONS OF TONS OF GARBAGE FROM NEW YORK. WE'VE SEEN THE PROBLEM FROM BOTH SIDES.

DURING THAT SAME TIME, MILLIONS OF GALLONS OF CHEMICAL WASTES FROM INDUSTRIES IN SURROUNDING STATES WERE CONTRIBUTING TO THE CONTAMINATION OF OUR LANDFILLS. INDISCRIMINATE DUMPING OF TOXIC WASTE IN LANDFILLS CUT DOWN ON OUR CAPACITY BY FORCING US TO TAKE LEAKING LANDFILLS OFF-LINE, IN ADDITION TO BURDENING THE STATE WITH COSTLY CLEANUP BILLS.

HISTORY IS INTERESTING, BUT THE NEED FOR THIS COUNTRY TO COME TO GRIPS WITH OUR SOLID WASTE PROBLEMS IS FAR MORE SERIOUS. WE KNOW WE CAN'T KEEP SWEEPING OUR WASTE -- OR OUR PROBLEMS -- UNDER THE RUG. THE AMENDMENT WOULD CRIPPLE OUR EFFORTS AND CAUSE ADDITIONAL ENVIRONMENTAL PROBLEMS -- PROBLEMS THAT WOULD CARRY A HEAVY ECONOMIC COST DOWN THE ROAD. WE ALREADY HAVE OUR HANDS FULL WITH OZONE DEPLETION, ACID RAIN, GLOBAL WARMING AND POLLUTED DRINKING WATER. WE DON'T NEED TO ADD TO THE LIST.

AS AN ALTERNATE TO THE AMENDMENT I SUGGEST THAT STATES HAVE THE ABILITY TO CHARGE A DIFFERENT PRICE TO OUT-OF-STATE WASTE ONLY WHEN A STATE DOES NOT HAVE AN EPA APPROVED SOLID WASTE PLAN. IT WOULD BE UP TO EPA TO DETERMINE WHETHER A STATE IS DOING WHAT IT SHOULD WITH SOLID WASTE PRODUCED IN THAT STATE.

I DON'T HAVE ANY DIFFICULTY PROVIDING THE EPA WITH THE AUTHORITY TO DETERMINE WHEN INTERSTATE FLOWS OF SOLID WASTE ARE ECONOMICALLY AND ENVIRONMENTALLY UNSOUND. IN FACT, THE EPA SHOULD HAVE BEEN INVOLVED YEARS AGO AS PART OF THE SOLID WASTE PLAN APPROVAL PROCESS UNDER RCRA. NEGLECT HAS RENDERED THE EPA'S SOLID WASTE PROGRAM MEANINGLESS.

UNDER MY PROPOSAL, EVEN IF STATES CAN CHARGE A DIFFERENT AMOUNT FOR OUT-OF-STATE GARBAGE, THAT WOULD NOT INCLUDE RECYCLABLE ITEMS.

THERE IS MUCH MORE THAT NEEDS TO BE DONE AT THE FEDERAL LEVEL THAT IS NOT IN THIS AMENDMENT. THE EPA MUST GET IN THE BUSINESS OF PROMOTING RECYCLING. WE THROW AWAY VALUABLE RESOURCES AND CAUSE ENVIRONMENTAL HARM AT THE SAME TIME. EPA MUST ACT TO PREVENT THE DISRUPTION OF RECYCLING MARKETS.

LET ME GIVE YOU A SMALL EXAMPLE. THE PEOPLE WHO MAKE GROLSCH BEER INSIST ON USING A CERAMIC TOP ATTACHED TO ITS BOTTLE. BUT JUST ONE OF THOSE TOPS IN AN ENTIRE LOAD OF GLASS BOUND FOR RECYCLING CAN RUIN THE ENTIRE LOAD. NEW JERSEY HAS ASKED THE MANUFACTURER TO COME UP WITH A DIFFERENT TOP. IT IS NOT ESSENTIAL

TO THE BEER; IT IS SIMPLY A MARKETING DEVICE. THE MANUFACTURER REFUSED, AND THEM ADDED INSULT TO INJURY BY "APPLAUDING" OUR RECYCLING EFFORTS. IN OTHER WORDS -- IT WAS BUSINESS AS USUAL. THIS IS JUST ONE EXAMPLE OF WHY THE FEDERAL GOVERNMENT NEEDS TO BE INVOLVED.

WE MUST CREATE MARKETS FOR RECYCLED PRODUCTS. WE MUST MAKE SURE THE ECONOMIC INCENTIVES ENCOURAGE RECYCLING INSTEAD OF SUBSIDIZING THE USE OF VIRGIN RAW MATERIALS AS WE CURRENTLY DO. RECYCLING IS THE ANSWER TO OUR SOLID WASTE PROBLEMS, BUT IT CANNOT BE ACCOMPLISHED OVERNIGHT.

THE MOST FUNDAMENTAL FLAW WITH THE AMENDMENT PROPOSED BY THE SENATOR FROM INDIANA IS THAT IT ALLOWS 50 STATES TO SET 50 DIFFERENT POLICIES IN AN AREA THAT HAS NATIONAL, AND EVEN INTERNATIONAL, CONSEQUENCES. LET ME GIVE YOU AN IDEA OF WHAT THAT MEANS ON A SMALLER SCALE.

BEFORE I TOOK OFFICE, THERE WERE PLANS FOR 21 INCINERATORS IN NEW JERSEY -- ONE IN EACH COUNTY. IF THESE PLANS HAD GONE FORWARD, WE WOULD HAVE RECYCLED NOTHING, BECAUSE WE WOULD HAVE NEEDED ALL OUR WASTE JUST TO SATISFY THE NEEDS OF THESE INCINERATORS. APPARENTLY, THERE ARE STILL SOME AROUND WHO BELIEVE THAT BY SHUTTING DOWN STATE BORDERS, THEY CAN FORCE NEW JERSEY TO FOREGO RECYCLING AND RETURN TO PLANS FOR 21 INCINERATORS.

IT SIMPLY MAKES NO ENVIRONMENTAL OR ECONOMIC SENSE TO START ATTACKING A PROBLEM BY USING A SYSTEM OF LAST RESORT.

WHATEVER WASTE DISPOSAL OPTIONS WE CHOOSE, THEY MUST BE SAFE. IN NEW JERSEY, WE HAVE GOOD STANDARDS FOR THE CONSTRUCTION OF SOLID WASTE LANDFILLS TO PROTECT OUR DRINKING WATER. BUT SOME OTHER STATES DON'T. ALTHOUGH NATIONAL STANDARDS HAVE BEEN PROMISED FOR MORE THAN A DECADE, THEY'VE NEVER BEEN ISSUED.

TO THE EXTENT THAT WE HAVE INCINERATORS, I HAVE LONG ARGUED THAT WE MUST HAVE ENVIRONMENTAL STANDARDS FOR THE ASH AND AIR EMISSIONS. IN NEW JERSEY, WE WILL. BUT WE CAN'T BE THE ONLY ONE, BECAUSE IF WE HAVE LEARNED ANYTHING OVER THE LAST DECADE, IT'S THAT POLLUTION DOES NOT RECOGNIZE BORDERS.

WE NEED ASSISTANCE TO REACH OR EXCEED THE RECYCLING GOALS WE INTEND TO ESTABLISH, NOT ROADBLOCKS. I URGE THE COMMITTEE TO REJECT THE SHORT-SIGHTEDNESS OF THIS AMENDMENT AND INSTEAD, LOOK AT THE LONG-TERM NEEDS OF THIS NATION.

I'M SURE THERE ARE SOME BASEBALL FANS AMONG YOU WHO CAN RELATE TO A BUMPER STICKER I FREQUENTLY SEE THESE DAYS. IT SAYS, "NATURE BATS LAST." THAT'S A POTENT MESSAGE, AND IT SPEAKS TO ALL OF US WHO ARE TRYING TO DO THE RIGHT THING TO PRESERVE OUR ENVIRONMENT.

INTERSTATE SOLID WASTE PLANNING PROPOSAL

- Seven year phase-in of state plans
- For a state that does not have a solid waste plan approved by EPA, those other states with approved plans may impose an additional charge on solid waste from that state, not to exceed the average disposal cost in the exporting state.
- Recyclables and certain other materials are not subject to this provision. The following materials are excluded:
  - Recyclables
  - Compostible materials
  - Sewage sludge
  - Any materials intended for beneficial reuse
  - Hazardous waste
  - Low-level radioactive waste
  - Nonhazardous industrial waste
  - Medical waste
  - Cleanup waste

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TESTIMONY OF

GOVERNOR NORMAN H. BANGERTER

before the

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONEMNTAL PROTECTION
U. S. SENATE

regarding

THE INTERSTATE SHIPMENT OF SOLID WASTE

JULY 18, 1990

Testimony of
Governor Norman H. Bangerter
before the
United States Senate
Committee on Environment and Public Works

Mr. Chairman and members of the Committee, I am here today representing the National Governors' Association and as a member of the NGA Solid Waste Taskforce. In addition, I have been working with the Western Governors' Association to develop solid waste policies that will help to define the role of state and federal agencies in the management of solid waste in the West. As Congress begins the process of reauthorization of the Resource Conservation and Recovery Act, it is important to consider solid waste issues in a comprehensive rather than "piecemeal" approach. However, I understand that the focus of this hearing is the interstate shipment of solid waste and that will be the basis for my remarks today.

Nationally, there is growing public consensus that a more aggressive approach to management of solid waste should be initiated to assure protection of public health and valuable natural resources. Additionally, there is agreement that we must all work to reduce the amount of waste we generate and increase the materials we recycle or reuse. Implementation of these strategies is critical to conserve existing landfill capacity and to prevent improper disposal practices.

The latter is particularly important as siting of new solid waste facilities becomes increasingly difficult. This difficulty stems from several sources such as liabilities for owners and operators of landfills under the Federal Comprehensive Environmental Response Compensation and Liability Act, increased demands for land use other than landfills, federal land management policies which discourage use of federal land for waste disposal facilities, and an increasing public demand to protect groundwater, air quality and other resources.

As a result, states have used various mechanisms to address waste disposal issues. Some states have attempted to develop the disposal capacity necessary to handle the waste generated within their borders, while others have adopted policies that assure wastes are transported out of state for disposal. This position has created significant problems for states like Utah that find themselves in the unfortunate position of becoming an "import" state.

For example, based on data prepared for Utah's capacity assurance plan in 1987, Utah exported 7,100 tons of hazardous waste to out-of-state facilities and received approximately 71,000 tons of hazardous waste for treatment and disposal. That represents a tenfold difference in the amount of waste being sent out of Utah and the amount shipped into our state for proper disposal. This significant difference is projected to increase sharply in the near future due to the construction and operation of a newly permitted commercial hazardous waste incinerator in Utah. A similar and equally alarming trend is expected to develop as new commercial solid waste landfills and medical waste incinerators are constructed.

Two years ago, Utah found itself in the position of having eleven commercial hazardous waste facilities, three commercial medical waste incinerators and several commercial municipal and industrial waste facilities proposed for construction in the state. Each of these facilities was relying on out-of-state generated waste to maintain commercial viability. Utah was on the verge of becoming the "dumping ground" of the western United States. We found that some of the export states had in fact created incentives for out-of-state disposal and had little or no concern for the resultant impacts in Utah.

As the facility proposals increased, so did the concerns of Utah's citizens regarding the "dumping ground" image and the potential harm these facilities presented to our natural resources. During the 1990 session of the Utah State

Legislature, I worked closely with our legislative leadership to address those concerns. Legislation was passed that would limit the number of commercial waste facilities developed in Utah and assure proper permitting and compliance oversight for those that received construction approval.

To accomplish this objective, a complex system of approval was created including local government, the State Division of Environmental Health and EPA when necessary, the Governor, and finally the State Legislature. This procedure will be followed for each individual commercial facility prior to its construction. Another important aspect of the new law was the development of a disposal fee system for commercial facilities. This provision assured fees charged for out-of-state waste were comparable to those in surrounding states and that economic advantages to disposal in Utah due to fee differentials with other states were minimized. The fee also assures sufficient revenues for regulatory oversight of such facilities and emergency response capabilities.

It is our position that Utah has a responsibility to assure adequate disposal capacity for waste generated within our state. We have taken seriously the need for comprehensive, long-range solid waste management and planning to occur at both the state and local levels. This will assure not only adequate disposal capacity, but appropriate waste minimization and recycling activities. In addition, we have taken an active role in development of waste disposal policy and plans in our western region. We are committed to doing our part. However, we believe that other states and the federal government must in turn do their part if the waste disposal problems in the West and other parts of the country are to be solved.

Utah has actively participated in the development of NGA and WGA policy positions on solid waste management and in the development of the report of the Task Force on Solid Waste Management released today by the National Governors' Association. This report establishes four goals which the Governors believe are critical to solving the national solid waste problem. The first is to minimize the total amount of municipal solid waste requiring treatment and or recycling. The second is to reverse the growth in per capita waste generation and reduce the toxicity of consumer products. The third is to aspire nationally over the long term to reach a recycling goal of 50 percent. Finally and perhaps most importantly, each state, alone or in cooperation with other states, should manage the waste produced within its borders. I would like to emphasize that the interstate management of solid waste must be done in a cooperative effort and not by a unilateral decision of the exporting state to ship such waste out of state as the first and only solution to capacity shortages.

It is my belief that in order to accomplish these goals and properly manage solid waste several things must occur:

1. States must accept responsibility for the waste generated within their borders and assure that adequate disposal capacity is provided for that waste.

2. Congress should carefully consider allowing states to charge differential fees to assure that incentives to dispose of waste out of state are minimized and to provide necessary resources for oversight and emergency response capability for waste disposal facilities. This requires some waiver of the interstate commerce provisions which apply to waste disposal.

3. Solid waste management is an issue best addressed at the state and local level. Federal requirements should build on state and local regulatory programs and permit structures. Any reauthorization of RCRA and any subsequent regulations should establish a state based approach for the protection of public health and the environment. Any congressional or federally managed program in

solid waste disposal should take into account specific geographic and demographic conditions which exist in the West.

4. It is critical that reauthorization of RCRA include specific language that defines the federal role in solid waste management. The level of federal oversight and management of solid waste must rely on state and local governments in leadership roles rather than imposing a process similar for authorization and oversight for hazardous waste regulations.

5. States and local governments should conduct long range, comprehensive solid waste management planning to address the waste management issues in their jurisdictions.

6. EPA should provide the technical and financial support to state and local governments to ensure that the states have sufficient resources to effectively implement any federal solid waste mandates.

7. Congress should assure that the federal land managers are required to work with the state and local governments to assure that solid waste disposal issues can be properly addressed. This is particularly important in those areas like the West where federal

lands predominate and have historically been used for siting of disposal sites. Federal land management policies should assure that siting municipal solid waste facilities on federal lands are not precluded.

Solid waste management issues have in some areas reached crisis proportions. It is imperative that they be addressed at all levels of government to assure protection of public health, the environment and valuable natural resources for generations to come.

Thank you for this opportunity to participate with you in addressing this important issue.

TESTIMONY

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

AT A PUBLIC HEARING OF THE

SENATE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

ON

INTERSTATE SOLID WASTE TRANSPORT ISSUES

JULY 18, 1990

THOMAS C. JORLING, COMMISSIONER

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INTERSTATE EXPORT OF SOLID WASTE IS INCREASING AS STATES STRUGGLE TO COME TO GRIPS WITH THEIR SOLID WASTE MANAGEMENT PROBLEMS. FREQUENTLY, SOLID WASTE IS LEAVING DENSELY POPULATED AREAS WHERE THE SHEER VOLUME OF WASTE HAS EXCEEDED THE CAPACITY OF EXISTING FACILITIES, WHERE FACILITIES ARE FACING CLOSURE UNDER ENFORCEMENT ACTIONS; AND WHERE EFFORTS TO SITE NEW FACILITIES ARE HAMPERED BY "NIMBY" FORCES, AND/OR THE SCARCITY OF LAND TO SITE NEW FACILITIES. EXPORTS ARE PRIMARILY DESTINED FOR PRIVATE COMMERCIAL LANDFILLS IN OTHER STATES.

IT IS UNDERSTANDABLE THAT BURGEONING INTERSTATE COMMERCE IN SOLID WASTE HAS CREATED TENSIONS. SOME STATES ARE MOVING TO ERECT BARRIERS WHERE THEY SEE THEIR DISPOSAL CAPACITY THREATENED OR SIMPLY TO PLACATE THE "NOT IN MY BACKYARD" SENTIMENT OF THEIR RESIDENTS.

ARE WE ON THE VERGE OF A CIVIL WAR OVER SOLID WASTE? I THINK NOT, BUT ONLY IF CONGRESS RECOGNIZES THE PROBLEM FOR WHAT IT TRULY IS: A CAPACITY PROBLEM BROUGHT ABOUT IN PART BY STRICTER ENVIRONMENTAL REGULATION. IT IS NOT, AS IT IS ALLEGED, A TACTIC BY SOME STATES TO ESCAPE POLITICALLY PAINFUL DECISIONS BY SHIFTING SOLID WASTE MANAGEMENT RESPONSIBILITIES TO OTHER STATES. A SHORT-SIGHTED, PAROCHIAL FIX THAT WOULD LEAVE MANY STATES FLOUNDERING IN THE YEARS BEFORE THEIR SOLID WASTE MANAGEMENT PROGRAMS ARE IN PLACE IS INAPPROPRIATE.

PORTIONS OF THE GARBAGE GENERATED IN NORTHEASTERN STATES IS SHIPPED OUT-OF-STATE FOR DISPOSAL UNDER COMMERCIAL PRACTICES. IN NEW YORK, WASTE EXPORTS HAVE RISEN DRAMATICALLY SINCE 1988, INCREASING FROM 1.1 MILLION TO NEARLY 2.4 MILLION TONS IN 1989 (AN

INCREASE OF 121%). EXPORTS OF SOLID WASTE WERE ESTIMATED TO ACCOUNT FOR 11% OF THE TOTAL SOLID WASTE STREAM IN 1989, AS COMPARED TO 5% IN 1988.

WHY THE JUMP IN SOLID WASTE EXPORTS? FOR NEW YORK STATE, THE EXPLANATION IS RELATIVELY SIMPLE:

(1) WE HAVE ONE OF THE MOST STRINGENT ENFORCEMENT PROGRAMS IN THE COUNTRY. OUR SOLID WASTE REGULATIONS SET STRICT STANDARDS FOR THE SITING, CONSTRUCTION AND OPERATION OF SOLID WASTE FACILITIES. OF THE 1600 LANDFILLS THAT WERE OPERATING IN 1964, FEWER THAN 250 ARE STILL IN USE. MANY WERE CLOSED, NOT BECAUSE THEY WERE FULL, BUT BECAUSE THEY COULD NOT MEET THE STATE'S STRICT NEW REGULATORY REQUIREMENTS WHICH ARE CONSIDERED TO BE THE MOST COMPREHENSIVE IN THE NATION. THEY PROTECT THE ENVIRONMENT AND PUBLIC HEALTH BY REQUIRING HYDROGEOLOGIC INVESTIGATIONS AND GROUNDWATER PROTECTION MEASURES, STATE-OF-THE-ART CONSTRUCTION, STRINGENT OPERATION AND MAINTENANCE STANDARDS, INCREASED MONITORING AND EXPANDED REPORTING MEASURES.

(2) WE ARE ONE OF THE MOST DENSELY-POPULATED STATES IN THE COUNTRY. NEW YORK CITY, THE LARGEST METROPOLITAN AREA IN THE NATION, IS CONCENTRATED IN A RELATIVELY SMALL AREA OF THE STATE. THE WASTE MANAGEMENT PROBLEMS OF DENSELY-POPULATED, HEAVILY-URBANIZED AREAS ARE THE MOST DIFFICULT TO OVERCOME BECAUSE THE VOLUME OF WASTE GENERATED IS ENORMOUS AND THERE ARE FEWER SITES AVAILABLE FOR NEW DISPOSAL FACILITIES.

(3) NEW YORK CITY HAD RAISED ITS TIPPING FEE AT THE FRESH KILLS LANDFILL FOR COMMERCIALLY DELIVERED WASTE, RESULTING IN MANY PRIVATE CARTERS SHIPPING THEIR WASTE OUT-OF-STATE TO AVOID

THE $40.00 PER CUBIC YARD TIPPING FEE. BUT, THE CITY HAS JUST DECIDED, PENDING PUBLIC COMMENT, TO REDUCE THAT FEE TO $25.00 PER CUBIC YARD. THIS WILL LIKELY RESULT IN REDUCING THE AMOUNT OF WASTE SHIPPED OUT-OF-STATE BY PRIVATE VENDORS WHO COLLECT THIS WASTE.

NEW YORK'S REGULATORY PROGRAM HAS PROCEEDED IN TANDEM WITH DEVELOPMENT OF A LONG-RANGE, MULTI-FACETED STRATEGY FOR REDUCING WASTE GENERATION, INCREASING RECYCLING, AND REPLACING LOST CAPACITY.

-- IN 1987, WE RELEASED A STATEWIDE SOLID WASTE MANAGEMENT PLAN ESTABLISHING A GOAL OF 50% WASTE REDUCTION/REUSE/RECYCLING BY 1997. MOST IF NOT ALL THE ELEMENTS OF OUR PLAN ARE CONSISTENT WITH THE PROPOSED RCRA AMENDMENT NOW PENDING BEFORE THIS COMMITTEE.

-- IN 1988, GOVERNOR CUOMO INTRODUCED AND SIGNED INTO LAW THE NEW YORK STATE SOLID WASTE MANAGEMENT ACT, WHICH PROVIDED THE STATUTORY AUTHORITY TO GUIDE LOCAL GOVERNMENTS IN REDUCING THE SOLID WASTE GENERATED BY THEIR RESIDENTS AND IN PLANNING FOR SAFE DISPOSAL OF THE REMAINING WASTE. UNDER NEW YORK LAW, LOCAL GOVERNMENTS ARE REQUIRED TO HAVE IN PLACE BY SEPTEMBER 1, 1992 LAWS REQUIRING SOURCE SEPARATION OF RECYCLABLE OR REUSABLE MATERIALS. WE REQUIRE A COMPREHENSIVE MANAGEMENT PLAN AS A CONDITION OF PERMIT FOR NEW FACILITIES. IN THE FIRST YEAR OF THIS LAW WE AWARDED $7.5 MILLION IN PLANNING GRANTS TO LOCAL GOVERNMENTS.

-- NEW YORK'S SOLID WASTE MANAGEMENT ACT MAKES THE STATE GOVERNMENT ONE OF THE MOST AGGRESSIVE IN THE NATION IN PROVIDING

TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS. WE HAVE A BUREAU WITHIN THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DEVOTED SOLELY TO WASTE REDUCTION AND RECYCLING, AND WE ARE DEVELOPING MANUALS AND OTHER FORMS OF TECHNICAL ASSISTANCE ON PLANNING, FACILITY SITING, AND RECYCLING. A TOTAL OF $12 MILLION IN RECYCLING ASSISTANCE FOR LOCAL GOVERNMENTS WAS AUTHORIZED UNDER THE 1988 ACT.

-- NEW YORK ENACTED A RETURNABLE CONTAINER LAW IN 1983 WHICH REQUIRES DEPOSITS ON MOST SOFT DRINK, MALT BEVERAGE AND WINE COOLER CONTAINERS SOLD IN NEW YORK STATE. SINCE ITS INCEPTION, THIS PROGRAM HAS REDUCED THE WEIGHT OF THE WASTE STREAM BY 5% AND THE VOLUME BY 8%.

-- NEW YORK HAS ALSO ALLOCATED HUNDREDS OF MILLIONS OF DOLLARS OF STATE INDUSTRIAL DEVELOPMENT BOND CAPACITY FOR THE CONSTRUCTION OF LOCAL SOLID WASTE FACILITIES AND HAS PROVIDED MILLIONS OF DOLLARS IN FINANCIAL ASSISTANCE TO LOCALITIES FOR RESOURCE REUSE AND RECOVERY PROGRAMS AND PLANNING.

-- NEW YORK STATE VOTERS WILL BE ASKED TO APPROVE THE 21ST CENTURY ENVIRONMENTAL QUALITY BOND ACT THIS NOVEMBER WHICH, AMONG OTHER COMPONENTS, WILL PROVIDE $525 MILLION TO HELP MUNICIPALITIES ACHIEVE SOLID WASTE MANAGEMENT GOALS. OF THAT TOTAL, $175 MILLION WILL SUPPORT MATCHING GRANTS FOR CLOSING LANDFILLS. THE BOND ACT SETS ASIDE $20 MILLION FOR GRANTS FOR INNOVATIVE RECYCLING DEMONSTRATION PROJECTS; $140 MILLION FOR MUNICIPAL RECYCLING PROJECTS; $140 MILLION FOR SECONDARY MATERIALS REGIONAL MARKETING ASSISTANCE PROJECTS; AND $50 MILLION FOR STATE ASSISTANCE FOR REGULATED MEDICAL WASTE MANAGEMENT PROJECTS. $100 MILLION FROM A

PRIOR BOND ACT WILL ALSO BE USED FOR MUNICIPAL LANDFILL CLOSURE GRANTS.

-- AND, IN THE AREAS OF THE STATE WHERE INTERSTATE EXPORTS ARE THE GREATEST, NAMELY, LONG ISLAND AND NEW YORK CITY, WE ARE MAKING GREAT STRIDES TO PROMOTE SELF-SUFFICIENCY IN SOLID WASTE MANAGEMENT.

PURSUANT TO THE LONG ISLAND LANDFILL LAW, VIRTUALLY ALL LONG ISLAND LANDFILLS WILL NOT BE ABLE TO ACCEPT RAW GARBAGE AFTER THIS YEAR. THE LOCAL GOVERNMENTS ARE PURSUING A VARIETY OF OPTIONS TO REPLACE LOST CAPACITY; SOME ARE STILL SHIPPING TO LANDFILLS SCHEDULED TO CLOSE AND OTHERS ARE EXPORTING OUT OF STATE. BUT MANY OTHERS HAVE COMPLETED OR ARE IN THE PROCESS OF DEVELOPING REDUCTION/REUSE/RECYCLING PROGRAMS AND INCINERATORS AND RESOURCE RECOVERY PLANTS. WE ARE WORKING CLOSELY WITH LOCAL GOVERNMENTS ON LONG ISLAND TO HELP THEM IDENTIFY PRUDENT WAYS TO MANAGE THEIR WASTE WITHOUT HAVING TO RESORT TO SHIPPING OFF-ISLAND AS A LONG-TERM SOLUTION.

NEW YORK CITY IS PROCEEDING TOWARDS IMPLEMENTING A CITY-WIDE SOLID WASTE MANAGEMENT SYSTEM. THIS INCLUDES AN AMBITIOUS MANDATORY SOURCE SEPARATION AND RECYCLING PROGRAM WHICH CALLS FOR 15% RECYCLING BY 1991 AND 25% BY 1993, AND WHICH ALSO STRIVES FOR CONSISTENCY WITH THE STATEWIDE GOAL OF 50% RECYCLING BY 1997. IN THE MEANTIME, THE FRESH KILLS LANDFILL, OPERATING UNDER A STRINGENT CONSENT ORDER WITH THE DEPARTMENT, CONTINUES TO RECEIVE THE BULK OF THE CITY'S WASTE, WITH SOME WASTES FROM PRIVATE CARTERS GOING OUT-OF-STATE.

THUS, JUDGED AGAINST THE DIRECTION SET BY THE RCRA BILLS PENDING BEFORE THIS COMMITTEE, NEW YORK STATE IS PROCEEDING AGGRESSIVELY TO MANAGE ALL THE SOLID WASTE GENERATED WITHIN ITS BORDERS. WHAT CONGRESS MUST UNDERSTAND IS THAT MAKING THE TRANSFORMATION FROM A THROWAWAY SOCIETY TO ONE THAT SUSTAINS SOLID WASTE MANAGEMENT, IS A LONG AND TORTUOUS PROCESS. LOCAL PLANNING CAN TAKE YEARS, PARTICULARLY IF REGIONAL SOLUTIONS ARE SOUGHT. LEAD TIMES FOR FACILITY SITING ARE LONG AND THE SITING PROCESS, AS YOU KNOW, IS COMPLEX.

AND, QUITE FRANKLY, WE ARE PROCEEDING IN A VACUUM OF FEDERAL LEADERSHIP. THE FEDERAL GOVERNMENT IS BEST POSITIONED TO DEVELOP TECHNICAL INFORMATION ON RECYCLING AND TO IDENTIFY EXISTING MARKETS OR CREATE NEW MARKETS FOR THE GOODS RECYCLED UNDER LOCAL PROGRAMS. MOST IMPORTANTLY, THE FEDERAL GOVERNMENT MUST USE ITS AUTHORITY TO REGULATE PACKAGING AND THE CHEMICAL COMPOSITION OF PRODUCTS TO ASSIST OUR REUSE AND RECYCLING EFFORTS. A NUMBER OF WORTHWHILE MEASURES HAVE BEEN PROPOSED TO ENCOURAGE FEDERAL ASSISTANCE TO STATES, BUT THUS FAR THE PROMISES HAVE NOT BEEN MATCHED BY FOLLOW-THROUGH.

WITHOUT FEDERAL ASSISTANCE, STATES LIKE NEW YORK CAN PROCEED WITH ENVIRONMENTALLY SOUND SOLID WASTE MANAGEMENT PROGRAMS ONLY IF THE EXPORT OPTION IS AVAILABLE ON A SHORT-TERM BASIS UNTIL TEMPORARY CAPACITY CRISES ARE RELIEVED. WE STRONGLY BELIEVE THAT STATE AND LOCAL GOVERNMENTS SHOULD BE SELF-SUFFICIENT AND EVENTUALLY DEVELOP ALL OF THEIR CAPACITY IN-STATE. WE ALSO FROWN UPON EXPORTATION TO OUT-OF-STATE FACILITIES THAT DO NOT MEET THE SAME FACILITY DESIGN STANDARDS AS NEW YORK'S. HOWEVER, UNLESS

MINIMUM FACILITY DESIGN STANDARDS ARE PRESCRIBED IN RCRA AND ARE ENFORCED BY THE STATES, NEW YORK WILL CONTINUE TO LACK CONTROL OVER THE DISPOSITION OF SOLID WASTE ONCE IT LEAVES THE STATE.

IN CLOSING, MR. CHAIRMAN, WE ASK THAT THE MOVEMENT OF SOLID WASTE BETWEEN STATES BE EXAMINED FOR BOTH ITS EFFECTS AND ITS ROOT CAUSES. WE BELIEVE THIS CAN BE ACCOMPLISHED RESPONSIBLY ONLY THROUGH A REWRITE OF RCRA SUBTITLE "D" WHERE ALL POLICY IMPLICATIONS CAN BE EVALUATED. THE FEDERAL GOVERNMENT MUST PRESCRIBE NATIONAL DESIGN AND OPERATING REQUIREMENTS TO PREVENT CREATION OF POLLUTION HAVENS AND TO ENSURE THAT STATES DO NOT CANCEL OR DEFER ENFORCEMENT ACTIONS AGAINST NON-COMPLYING FACILITIES IN ORDER TO SAVE DWINDLING DISPOSAL CAPACITY. AND, THE RESOURCES OF THE FEDERAL GOVERNMENT MUST BE MARSHALLED WHERE THEY ARE MOST NEEDED AND WILL BE MOST EFFECTIVE -- THAT IS, IN DEVELOPING TECHNOLOGIES AND MARKETS FOR REUSING AND RECYCLING GOODS AND IN REGULATING THE CHEMICAL COMPOSITION AND CHARACTER OF PRODUCTS -- SUCH AS PACKAGING -- THAT ARE IN INTERSTATE COMMERCE.

WITH THE DEDICATED HELP OF THE FEDERAL GOVERNMENT, NEW YORK STATE CAN BECOME SELF-SUFFICIENT IN DISPOSAL CAPACITY SOONER THAN IT WOULD OTHERWISE.

TOTAL P.09

Seattle
Solid Waste Utility
Division of Seattle Engineering Department

Seattle Waste Transport and Disposal Project

TESTIMONY ON INTERSTATE TRANSPORT OF WASTE
BY LORIE PARKER
SEATTLE SOLID WASTE UTILITY
BEFORE
U.S. SENATE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
JULY 18,1990

Introduction

Senator Baucus, members of Congress, I am Lorie Parker, Director of the Waste Transport and Disposal Project at the City of Seattle Solid Waste Utility. I was invited to testify today because the City of Seattle is preparing to transport its waste by rail to an Oregon landfill just across the Columbia River from the State of Washington. I will explain how we came to this decision and why we believe it is a good one, and then I would like to discuss the issue of interstate transport of waste in general.

Seattle's Story

The City of Seattle has learned about environmentally safe disposal the hard way. For many years we owned and operated two landfills just outside the City. In 1983 one landfill was closed; in 1986 the second landfill was closed after it leaked explosive levels of methane gas. We are now doing final closure of these two landfills as Superfund sites. Cost of closure is likely to exceed $90 million, almost all of which is being paid for by our ratepayers as part of their garbage bill.

Currently we are disposing of our waste at our local county landfill which has a limited life, and which will never be able to be replaced in the County because of urban densities.

In 1987, after closure of our landfills, Seattle began a thorough and comprehensive study of our options for managing the City's waste. A ten volume environmental impact statement was prepared which looked at the potential for recycling (22 different types of waste. A ten volume environmental impact statement was prepared which looked at the potential for recycling (22 different types of waste reduction and recycling programs were analyzed) as well as various disposal options, including waste-to-energy plants and landfilling. As a result of this study, the City Council adopted a 60% recycling/composting goal and decided to dispose of the remaining 40% nonrecycled waste in a landfill in the arid region east of the Cascade Mountains. (The Cascades is a range which runs from southern British Columbia to northern California.)

This decision was a dramatic one in that no local government in the country had adopted such an aggressive recycling goal, nor had any local government made a decision to longhaul transport its waste by rail.

I am proud to say that not only have we set a high recycling goal for ourselves, but we also have a very specific plan to reach it and are already recycling 36% of our waste. We charge our customers by the amount of waste they produce, which encourages them to reduce or recycle. We collect newspaper, cardboard, mixed wastepaper, glass, tin cans, aluminum cans, plastic bottles, and yard waste at curbside. In addition, at our transfer stations, we also recycle mattresses, motor oil, automobile batteries, large appliances, wood waste and latex paint. I tell you all this to emphasize that we are doing all we can to reduce and recycle our wastestream before we dispose of it in our neighbor's backyard.

So why are we proposing to take our waste to Oregon for disposal? Landfills in the arid region east of the Cascade Mountains generally present fewer environmental hazards than areas with more rainfall. Little or no leachate and methane gas is produced at an arid site. Recognizing this, the State of Washington has developed two sets of Minimal Functional Standards for the construction and operation of landfills, with more stringent standards applied to western Washington where rainfall is substantially higher. The environmental advantage of an arid landfill is even greater if it is combined with the higher levels of engineered protection required for high rainfall areas such as western Washington.

In addition, landfills in sparsely populated areas also may have a lower potential for land use conflicts with neighbors, partly because the landfill site can be seen as a source of jobs and economic development for the county. For these reasons, the City chose to procure a landfill east of the Cascades yet require the use of the more stringent western Washington landfill standards.

In 1989 the City issued a request for proposals for waste transport to, and disposal at, a landfill east of the Cascades. The City required all the proposers to meet the State of Washington's landfill regulations for western Washington. These regulations include a double-lined cell, gas and leachate collection systems, and vadose zone monitoring. Though price is important to us, we also made it clear that it is not our only consideration. Equally important were environmental considerations and acceptance by the host community.

The City received three proposals, two from developers in Washington, and one from Waste Management, Inc., which had already sited and developed a 2000 acre landfill in eastern Oregon just six miles south of the Columbia River (the Washington-Oregon boundary). After an intensive analysis of the management, environmental, technical and financial capabilities of all the proposers, Waste Management was chosen as the preferred vendor.
This choice was made based on the host community's demonstrated acceptance of the landfill, the environmental soundness of the site and the company's experience in managing state-of-the-art landfills. The main competitor, with a landfill proposed just 10 miles from the Waste Management landfill, but on the Washington side of the river, did not rank as high in management, financial guarantees, or in community acceptance. In other words, the City chose a landfill in another state because we believe it to be superior to any in our state and because the host community demonstrated more willingness to accept our waste than host communities at the other sites.

We have just published a final environmental impact statement analyzing the effects of transporting our waste by rail to the Oregon landfill. During that process, we held two series of public hearings in Oregon communities along the rail route and near the landfill. A major concern for many Oregonians was that waste not be trucked through the Columbia River Gorge National Scenic Area. We understand that the Gorge is a precious scenic resource and are prohibiting any transport of waste by truck through the Gorge. Once it was understood how we intend to ship our waste (in sealed marine shipping containers loaded on double-stack railcars), there has been very little controversy about our waste going to Oregon for disposal. The community near the landfill welcomes our waste because the County (2000 inhabitants) receives a 75¢ per ton host fee and the landfill provides 50 new jobs.

Our story is just one example which illustrates why there are good reasons for the interstate transport of waste, and why it should not be assumed that interstate transport of waste is always a problem.

Rational Reasons for Interstate Transport of Waste

In a search for a landfill site, the criteria should be to find an economically feasible site that provides the best environmental protection and conflicts the least with the people around it. If the search were artificially circumscribed by political boundaries, then such a site would not necessarily be found. Environmental decisions should be "border-blind", as one commenter told us during hearings on our environmental impact statement. In our case, the two regional landfills are ten miles apart: we chose the one seven miles South of the River, rather than three miles North of the River.

For communities located near state boundaries, a prohibition against interstate transport of waste would be particularly burdensome. If one assumes that a landfill site search is undertaken within a certain radius of the center of the garbage generation area, then a state boundary may cut the potential search area in half. Such would be the case for Clark County, Washington which is located on the Washington side of the Columbia River just north of Portland, Oregon. Clark County has just chosen to transport its waste to an eastern Oregon landfill via barge down the Columbia River. It is certainly not unreasonable for Clark County to look in Oregon for a landfill if distance is a criterion.

Times are changing in the waste disposal industry. Most of these changes are in reaction to state regulations that require landfills to be constructed and operated under more stringent environmental standards than were required in the past. These new environmental regulations have increased the total cost and the economies of scale of landfill development, thus encouraging (if not requiring) large, regional landfills, typically located in rural areas. In addition, it may be necessary to look far afield to find a site which meets the environmental and other locational criteria now required for a state-of-the-art landfill. The little local dumps will soon be a thing of the past, and for environmental reasons, that's good. But this change means that there will only be a few big landfills and that the "sphere of influence" of such a landfill may reach beyond the state in which it is located.

As there is increasing reliance on regional landfills for disposal, it becomes increasingly important to assure a competitive environment so that communities get the lowest price. In Seattle's case, if we had not been able to consider the Oregon landfill, we might not have had a landfill available to us to meet our needs in a timely fashion. As a result of the RFP competition we held, Washington now has one large regional landfill near completion and at least two on the drawing boards. It will continue to be important in the future for cities and counties to have options so that there is not a state regional landfill monopoly.

All this points to a new era when it will be increasingly important for states not to play the "Not in my backyard" game that has occurred within states and has made siting landfills so difficult.

Rational Ways to Deal with Interstate Transportation of Waste

States are not powerless to protect themselves from waste from other states, and the federal government could help too by establishing baseline environmental standards for waste disposal. As you know, currently there are no federal regulations for siting and operating a landfill, though EPA has proposed regulations under Subtitle D of RCRA. If there were baseline federal environmental standards which applied in every state, then there would be less likelihood that waste would migrate across state lines to find cheap landfills in states with weak environmental regulations.

States can also set higher environmental standards for themselves and apply them equally to out-of-state waste entering their state for disposal. Such is the case in Oregon. Oregon requires the opportunity to recycle to be offered to every person in the state, and by Oregon law this applies equally to out-of-state areas bringing waste into the state of Oregon. That's fair. Everyone disposing of waste in Oregon must make an equal effort to reduce their waste by recycling first before disposing. Thus many communities in surrounding states cannot dispose of their waste in Oregon because they do not have curbside recycling programs. For the City of Seattle, Oregon's standard is not a problem because we meet and exceed it.

Summary

Finding environmentally superior sites for disposal of waste should be the overriding factor when choosing disposal sites. Secondly, communities should have access to disposal options, in order to prevent the development of a landfill monopoly and the potential payment of inappropriately high prices. Limiting the search by applying artificial political boundaries is not good environmental or economic policy and should be avoided.

NSWMA
National Solid Wastes Management Association

Statement of

Allan Moore
President
National Solid Wastes Management Association

on the Interstate Movement of Municipal Solid Waste

before

U. S. Senate
Committee on Environment and Public Works
Subcommittee on Environmental Protection

Washington, D.C.
July 18, 1990

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Mr. Chairman, my name is Allen Moore. I am President of the National Solid Wastes Management Association (NSWMA), a trade group representing more than 2,500 private waste service companies in the U.S. and Canada. Our members include transporters of solid and hazardous waste, operators of solid and hazardous waste landfills and incinerators, recyclers, manufacturers and distributors of waste management equipment, and providers of legal, financial, and consulting services to the waste management industry.

NSWMA members would be directly affected by a ban on importation of municipal solid waste (MSW), and we are deeply concerned about any proposals to authorize states to impose such bans -- whether directly or indirectly, through discriminatory, prohibitively high fees that would have the same effect. We are concerned because imposition of a ban would disrupt historical, logical, and desirable arrangements for the management of the nation's wastes at a time of rapidly declining disposal capacity. A ban in whatever form presents both environmental and economic risks -- particularly to smaller and poorer communities. We do not believe that waste bans, by themselves, would serve any useful countervailing purpose to offset their adverse effects.

To understand why this is so, it is necessary to understand the reasons for, and desirability of, historical patterns of waste transport and disposal. We should not allow anger about the recent export of massive quantities of wastes from New York and New Jersey to stampede us into a policy that is contrary to this nation's long-term interests.

BACKGROUND

The private collection and disposal of municipal refuse is a business providing a vital public service. Unfortunately, there are many who think that it is a simple and essentially unplanned activity. Indeed, while this view may be widely held, nothing is further from the truth. A refuse driver does not merely pick up garbage until his truck is filled and then discuss with his crew where the trash should ultimately be transported for disposal. In fact, setting up a waste services program involves extensive and detailed planning.

Setting up a municipal waste collection system involves a thorough analysis of collection needs. Manpower and equipment are matched to the specific population, geography, waste-generating characteristics in the area. Routing alternatives, as well as the types and frequency of collection service, are planned based upon street layout, population centers, and local requirements. Managing operating expenses, such as fuel, equipment maintenance, compliance with environmental laws and regulations, wages and insurance, and other budget items, obviously will be affected by the distances and times the trucks must spend on the road going to a disposal site.

Generally, it is to everyone's advantage that the place of disposal be close to the points of waste generation. And, until the past decade or so, the collection/disposal system largely operated around this principle. However, disposal sites began moving further and further from collection points as existing sites were closed and not replaced because of environmental regulations, zoning restrictions, and political and economic considerations.

There are two principal reasons that MSW moves in interstate commerce from the state in which it is generated to another state for disposal.

The first reason is that it makes good sense now and has made good sense throughout the history of this nation from an economic, social, and environmental standpoint. Natural "wastesheds" have developed over time. They reflect a cooperative and collective strategy for people in a region to solve their common problem -- how to dispose of their wastes in the most efficient, safe, environmentally protective, and cost-effective manner. The answer in many cases has been to send MSW from one state to a landfill or waste-to-energy site in another state. This often involves an interstate shipment of only a few miles between contiguous states.

The second reason for interstate movement of waste is that adequate disposal capacity is either not available or not affordable in the generating state because that state has failed to make the hard decisions necessary to develop such capacity. This second reason is distinguished from the first by the fact that it is primarily political and, only secondarily, economic or environmental. Generating states in this second case have environmentally suitable sites, but they don't use them because of land costs, NIMBYISM (the Not-In-My-Backyard syndrome), or other reasons. The political and economic costs of disposal in the generating state become so high that it is "less expensive" to transport the MSW to other states for disposal.

Is the interstate movement of MSW bad?

No, not inherently so. In fact, it has been, and continues to be, essential and beneficial to both generating and receiving states. Host communities can gain economic benefits from a safe and environmentally protective facility, while the generating community is able to dispose of its MSW safely and economically. The costs of state-of-the-art facilities that will be mandated by the Subtitle D regulations of the Resource Conservation and Recovery Act and by the Clean Air Act can oftentimes only be sustained by revenues derived from the combined volume of MSW brought to the site from within and outside the state.

We recognize, however, that there are cases when interstate movement of MSW is a problem. We believe that those cases are largely the result of the second reason I identified, and they typically involve MSW from New York and New Jersey, neither of which has developed adequate disposal capacity. Their MSW threatens to use up the disposal capacity of states to which they are sending it. There is a solution to that problem, but it is not a ban on interstate movements of MSW.

What do the data show?

Good, reliable, and complete data on interstate movement of MSW are not collected or analyzed. As a result, we have been able to gather only what we believe is an illustrative sample of what is really going on. The information we have gathered is set forth in a series of charts and maps that is appended to this statement. Even the limited data that are available, however, confirm that extensive interstate movements form an intricate web of transactions that represent complex and valuable relationships between the people of the various states. This should be no surprise. It is just another manifestation of why the Commerce Clause of our Constitution has been considered so critically important to the success of our economic and political system.

Before summarizing the data, let me explain what we did to gather it. The U. S. Environmental Protection Agency (EPA) had no information on interstate movements of MSW. We therefore contacted officials and reviewed published reports of 44 states that we believed to be representative. Most of those contacted did not collect such information, and most of those with data could provide only limited information and tentative estimates. I say this not as a criticism, but to suggest two things: (1) the information is not complete; and (2) the interstate movement of MSW has not been seen as an acute problem warranting the attention, time, or resources of waste management professionals in most states. To supplement this information, we contacted our members who own or operate some of the disposal sites throughout the nation.

The results of this effort are the following:

- We identified 99 different and regular interactions between states during 1989. Each interaction reflects the fact that MSW moves between 2 states, as an import or an export;

- Of the 99 interactions, 74 (75%) were between contiguous states, and 8 (8%) more were between nearby, but non-contiguous states. Thus, 82% of all the interactions were among states in traditional, regional wastesheds. The remaining 17 (17%) interactions were between more distant, non-contiguous states;

- 8 states are exporters only;, 5 states are importers only; and 30 states are both importers and exporters;

- We estimate that about 15 million tons of MSW was moved in interstate commerce during 1989. This is 8% of the 180 million tons that EPA estimates is generated each year;

- Of the estimated 15 million tons in all interstate commerce, 7.9 million tons (53%) was exported from New York (2.4 million tons) and New Jersey (5.5 million tons); and

- If New York and New Jersey MSW is omitted, we estimate that more than 85% of the volume of MSW in interstate commerce moves between contiguous or nearby states in traditional regional wastesheds.

A ban would be counterproductive.

Large, new state-of-the-art landfills and waste-to-energy facilities are expensive. Increasingly, they rely on revenues derived from volumes of MSW coming for disposal from regional wastesheds. We believe that the funds necessary for planning, design, engineering, and construction of the desperately needed new capacity they offer will simply not be committed if there is a risk that the flow of waste to the site will be cut-off and projected revenues will decline sharply. Neither private nor public investors should assume that risk.

Existing facilities that were built in reliance on revenue from out-of-state MSW would also be affected by a ban. They could be forced to cease operations if the lost revenue could not be recovered through higher rates for in-state waste so as to meet the costs of debt service and operations.

In the absence of sufficient volume to sustain an efficient, large facility, smaller facilities would likely need to be built to meet a state's disposal needs. Thus, ironically, the imposition of a ban, or even the risk that a ban might be imposed, could lead to the need to site more, rather than fewer, facilities at more locations. There is no reason for confidence that NIMBYISM will not continue to frustrate the siting of those additional facilities.

The development of new, safe, environmentally protective disposal capacity would be hampered by a ban, and the former importer could be forced to keep open less environmentally protective facilities to dispose of its own MSW.

The nation needs capacity.

Since the country is not knee-deep in garbage from border-to-border and coast-to-coast, the characterization of our problem as a national solid waste "crisis" seems inappropriate. But Americans are generating more and more trash with less and less space to bury it and without sufficient alternatives in place to make up the difference. The result is local problems with national implications. Source and volume reduction methods are vital to our nation's waste management strategy and should be actively encouraged. Yet reduction does not obviate the need for disposal. Some quantity of garbage has to be disposed. To bring our disposal needs roughly into balance with the supply of existing landfill space, we will need to exceed EPA's national source reduction and recycling goals; we can burn more in incinerator facilities; we can construct new landfills; or, we can utilize any combination of these options.

It is not difficult to understand why state and local officials are tempted to impose import bans. The national picture is grim. If old landfills close and new ones open at today's rates, and if current recycling and resource recovery levels continue, our disposal requirements will exceed existing capacity before the end of this decade. Consequently, as disposal capacity around the country dwindles, disposal sites have taken on the status of scarce economic resources. They are vital to the continued orderly growth and development of any individual community which has one. There is a natural tendency to want to preserve that resource for the community, the county or the state in which it is located, and to prevent its capacity from being diminished or even exhausted by those from outside a certain geographic boundary.

Ideally, every state should have the capacity to treat and dispose of most, if not all, of its own MSW. But once it has that capacity, it should not be required to use it to dispose of only its waste, as long as there is assurance that its MSW will be managed responsibly.

The grant of authority to impose a ban on out-of-state waste holds no promise, by itself, that the importing or exporting state will, in fact, develop the capacity to manage its own MSW. If that is the goal, as we believe it must be, then states must be required to site and permit sufficient disposal capacity within the immediate future. If states like New York and New Jersey fail to do so, and continue to be excessive net exporters of MSW, they should be sanctioned. The imposition by a state with capacity of a ban on exports from such a net exporter could serve as a sanction for that purpose. To be effective, however, the exercise of the authority to do so would have to be dependent on the importing state having capacity and the exporting state failing to meet specified requirements.

Differential fees; recycling.

Finally, Mr. Chairman, I would like to comment briefly on two related matters.

First, differential fees for out-of-state waste are typically used to discriminate against out-of-state waste, rather than to reflect any legitimate difference such as the planning, administrative, and enforcement costs of a state's program that are not borne through taxes by out-of-state generators. They are usually thinly veiled bans that are objectionable for the same reasons.

The second matter involves recycling. Briefly, Mr. Chairman, I can think of few things that would be more devastating to recycling than to authorize states to ban the processing of out-of-state recyclables. I trust that no serious consideration will be given to any such proposal.

That concludes my statement, Mr. Chairman. I will be pleased to try to answer any questions.

Summary of Data on Interstate Movements

- At least 99 interactions occured between states for the import or export of MSW in 1989 (Tables 1 and 2)

  Of the 99 interactions, 74 were between contiguous states, 8 were between nearby but non-contiguous states, and 17 were between more distant non-contiguous states (Table 2)

- 8 states were exporting only
  5 states were importers only
  30 states imported and exported (Map 4)

- Of the 180 million tons of MSW generated, about 15 million tons (8%) moved in interstate commerce. 92% was treated and disposed within the generating state

  Of the 15 million tons in interstate commerce, 7.9 million tons (53%) was exported by New Jersey and New York (5.5 million tons from New Jersey; 2.4 million tons from New York) (Map 1)

- Excluding MSW from New Jersey and New York, the great majority of MSW shipped moves between contiguous and nearby states (Map 2)

TABLE 1

INTERSTATE MOVEMENTS OF MSW

(1989)

STATE	IMPORTS FROM	EXPORTS TO
ALABAMA	New Jersey Tennessee	Florida Mississippi
ARKANSAS	Texas	Louisiana Mississippi Tennessee Texas
CALIFORNIA		Nevada
CONNECTICUT	Massachusetts New York Rhode Island	Massachusetts Ohio
DELAWARE		Pennsylvania
D.C.		Pennsylvania Virginia
FLORIDA	Alabama	
IDAHO		Washington
ILLINOIS	Indiana Iowa Michigan Minnesota Missouri New Jersey Wisconsin	Indiana Kentucky Michigan Missouri Wisconsin

STATE	IMPORTS FROM	EXPORTS TO
INDIANA	Illinois Kentucky Michigan New Jersey New York Ohio	Illinois Kentucky Michigan Ohio
IOWA	Wisconsin	Illinois Minnesota Nebraska
KANSAS	Missouri	Missouri
KENTUCKY	Illinois Indiana New Jersey New York Ohio Tennessee West Virginia	Indiana Ohio
LOUISIANA	Arkansas Texas	Mississippi Texas
MAINE	Massachusetts New Hampshire	Massachusetts New Hampshire
MARYLAND		Pennsylvania
MASSACHUSETTS	Connecticut Maine New Hampshire New York Rhode Island Vermont	Connecticut Maine New Hampshire Vermont

STATE	IMPORTS FROM	EXPORTS TO
MICHIGAN	Illinois Indiana New Jersey Ohio Pennsylvania	Illinois Indiana Ohio
MINNESOTA	Iowa Wisconsin	Illinois North Dakota
MISSISSIPPI	Alabama Arkansas Louisiana Tennessee	Tennessee
MISSOURI	Illinois Kansas	Illinois Kansas
NEBRASKA	Iowa	Wyoming
NEVADA	California	
NEW HAMPSHIRE	Maine Massachusetts Rhode Island Vermont	Maine Massachusetts Vermont
NEW JERSEY		Alabama Illinois Indiana Kentucky Michigan Ohio Pennsylvania Virginia West Virginia
NEW MEXICO	New York Texas	Texas

STATE	IMPORTS FROM	EXPORTS TO
NEW YORK		Connecticut Indiana Kentucky Massachusetts New Mexico Ohio Pennsylvania Vermont Virginia West Virginia
NORTH CAROLINA	South Carolina	South Carolina
NORTH DAKOTA	Minnesota	
OHIO	Connecticut Indiana Kentucky Michigan New Jersey New York Pennsylvania	Indiana Kentucky Michigan Pennsylvania West Virginia
OKLAHOMA	Texas	
OREGON	Washington	Washington
PENNSYLVANIA	Delaware District of Columbia Maryland New Jersey New York Ohio	Michigan Ohio Virginia West Virginia
RHODE ISLAND		Connecticut Massachusetts New Hampshire

STATE	IMPORTS FROM	EXPORTS TO
SOUTH CAROLINA	North Carolina Virginia	North Carolina
TENNESSEE	Arkansas Mississippi	Alabama Kentucky Mississippi
TEXAS	Arkansas Louisiana New Mexico	Arkansas Louisiana New Mexico Oklahoma
VERMONT	Massachusetts New Hampshire New York	Massachusetts New Hampshire
VIRGINIA	District of Columbia New Jersey New York Pennsylvania	South Carolina
WASHINGTON	Idaho Oregon	Oregon
WEST VIRGINIA	New Jersey New York Ohio Pennsylvania	Kentucky
WISCONSIN	Illinois	Illinois Iowa Minnesota
WYOMING	Nebraska	

TABLE 2

EXPORTS BY STATE PAIRS (1989)

Alabama to Florida *
Alabama to Mississippi *

Arkansas to Louisiana *
Arkansas to Mississippi *
Arkansas to Tennessee *
Arkansas to Texas *

California to Nevada *

Connecticut to Massachusetts *
Connecticut to Ohio ***

Delaware to Pennsylvania *

D.C. to Pennsylvania **
D.C. to Virginia *

Idaho to Washington *

Illinois to Indiana *
Illinois to Kentucky *
Illinois to Michigan **
Illinois to Missouri *
Illinois to Wisconsin *

Indiana to Illinois *
Indiana to Kentucky *
Indiana to Michigan *
Indiana to Ohio *

Iowa to Illinois *
Iowa to Minnesota *
Iowa to Nebraska *

Kansas to Missouri *

Kentucky to Indiana *
Kentucky to Ohio *

Louisiana to Mississippi *
Louisiana to Texas *

Maine to Massachusetts **
Maine to New Hampshire *

Maryland to Pennsylvania *

Massachusetts to Connecticut *
Massachusetts to Maine **
Massachusetts to New Hampshire *
Massachusetts to Vermont *

Michigan to Illinois **
Michigan to Indiana *
Michigan to Ohio *

Minnesota to Illinois **
Minnesota to North Dakota *

Mississippi to Tennessee *

Missouri to Illinois *
Missouri to Kansas *

Nebraska to Wyoming *

New Hampshire to Maine *
New Hampshire to Massachusetts *
New Hampshire to Vermont *

New Jersey to Alabama ***
New Jersey to Illinois ***
New Jersey to Indiana ***
New Jersey to Kentucky ***
New Jersey to Michigan ***
New Jersey to Ohio ***
New Jersey to Pennsylvania *
New Jersey to Virginia ***
New Jersey to West Virginia ***

* Contiguous states
** Nearby non-contiguous states
*** More distant non-contiguous states

New Mexico to Texas *

New York to Connecticut *
New York to Indiana ***
New York to Kentucky ***
New York to Massachusetts *
New York to New Mexico ***
New York to Ohio ***
New York to Pennsylvania *
New York to Vermont *
New York to Virginia ***
New York to West Virginia ***

North Carolina to South Carolina *

Ohio to Indiana *
Ohio to Kentucky *
Ohio to Michigan *
Ohio to Pennsylvania *
Ohio to West Virginia *

Oregon to Washington *

Pennsylvania to Michigan ***
Pennsylvania to Ohio *
Pennsylvania to Virginia **
Pennsylvania to West Virginia *

Rhode Island to Connecticut *
Rhode Island to Massachusetts *
Rhode Island to New Hampshire **

South Carolina to North Carolina *

Tennessee to Alabama *
Tennessee to Kentucky *
Tennessee to Mississippi *

Texas to Arkansas *
Texas to Louisiana *
Texas to New Mexico *
Texas to Oklahoma *

Vermont to Massachusetts *
Vermont to New Hampshire *

Virginia to South Carolina ***

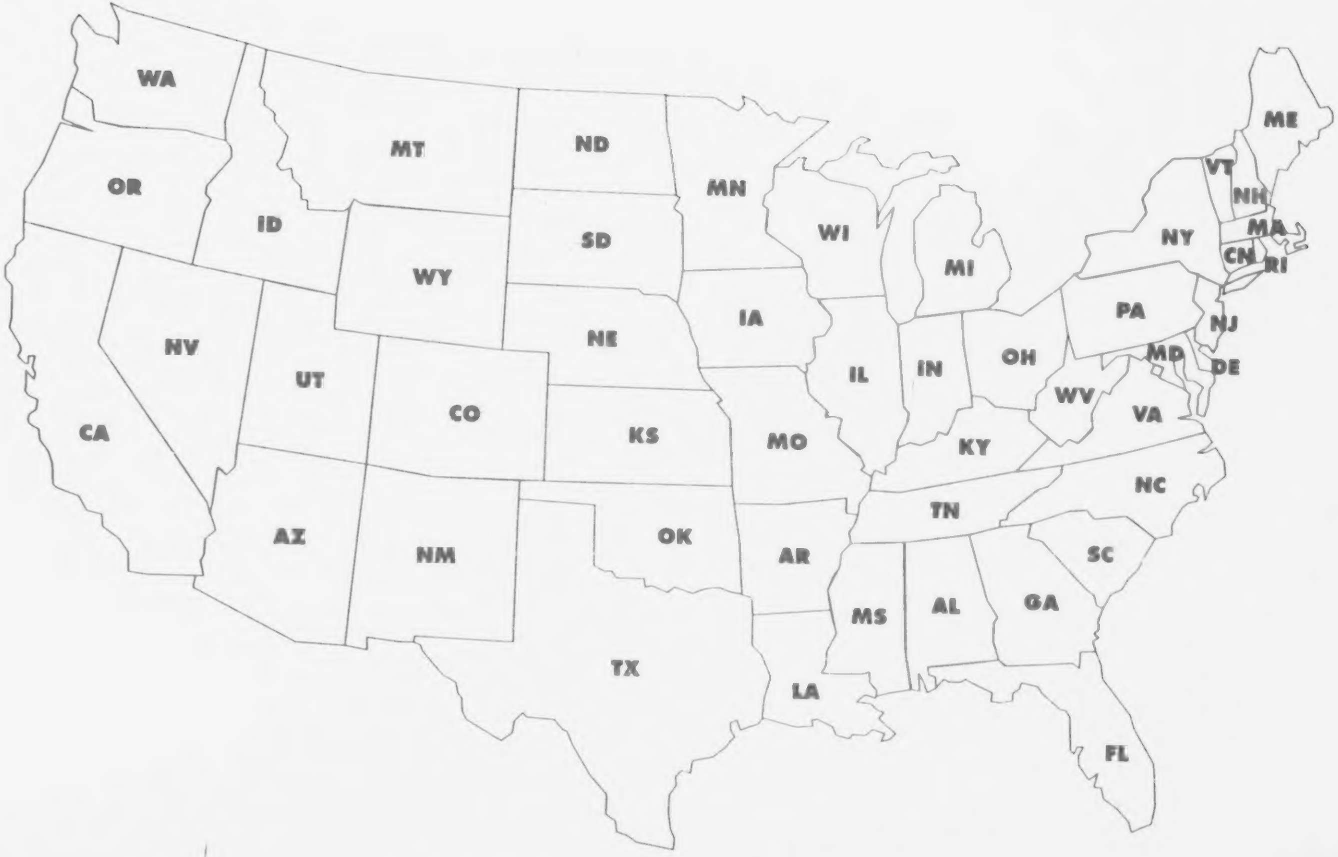
Washington to Oregon *

West Virginia to Kentucky *

Wisconsin to Illinois *
Wisconsin to Iowa *
Wisconsin to Minnesota *

* Contiguous states
** Nearby non-contiguous states
*** More distant non-contiguous states

Reference


WA
OR
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NV
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LA
WI
IL
MI
IN
MS
AL
OH
KY
TN
GA
FL
SC
NC
VA
WV
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VT
NH
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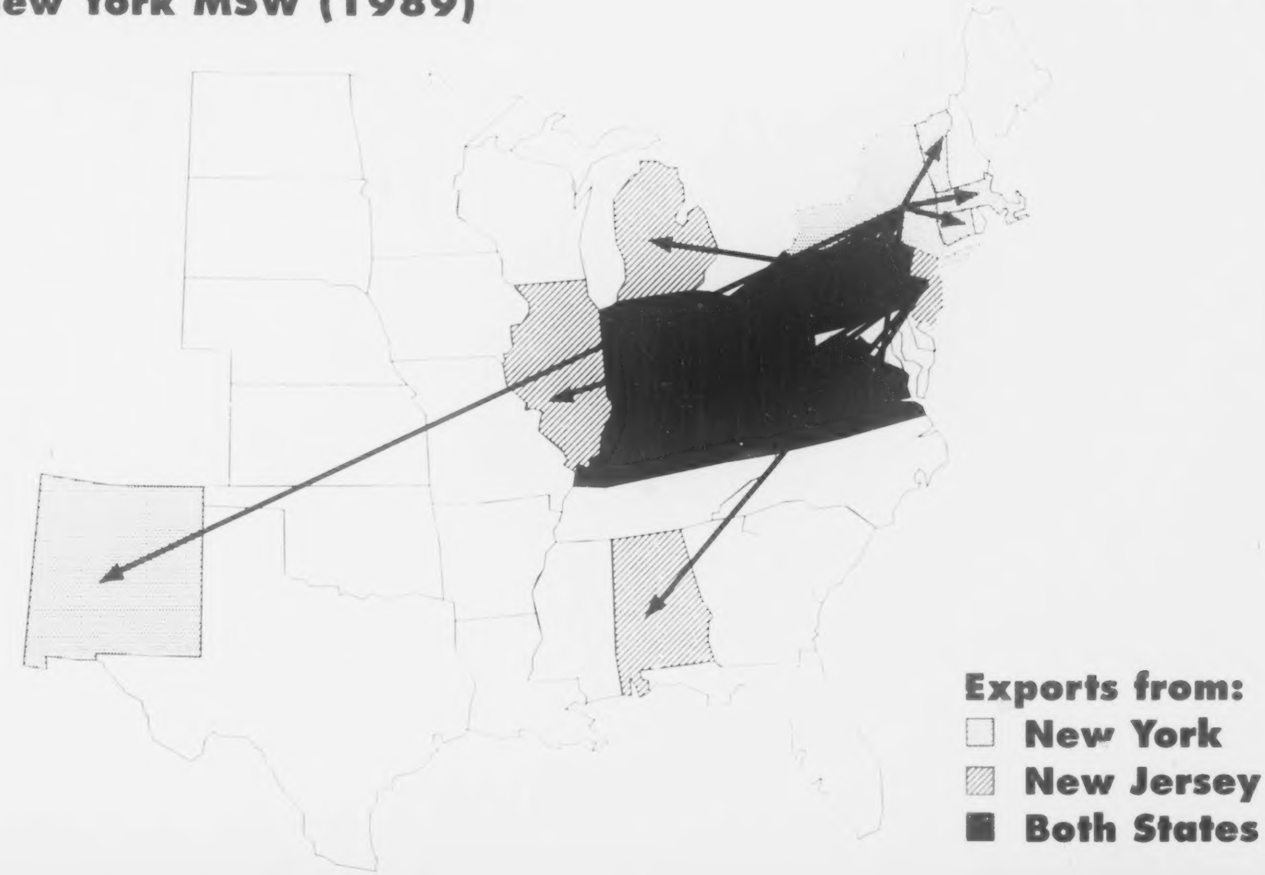
RI

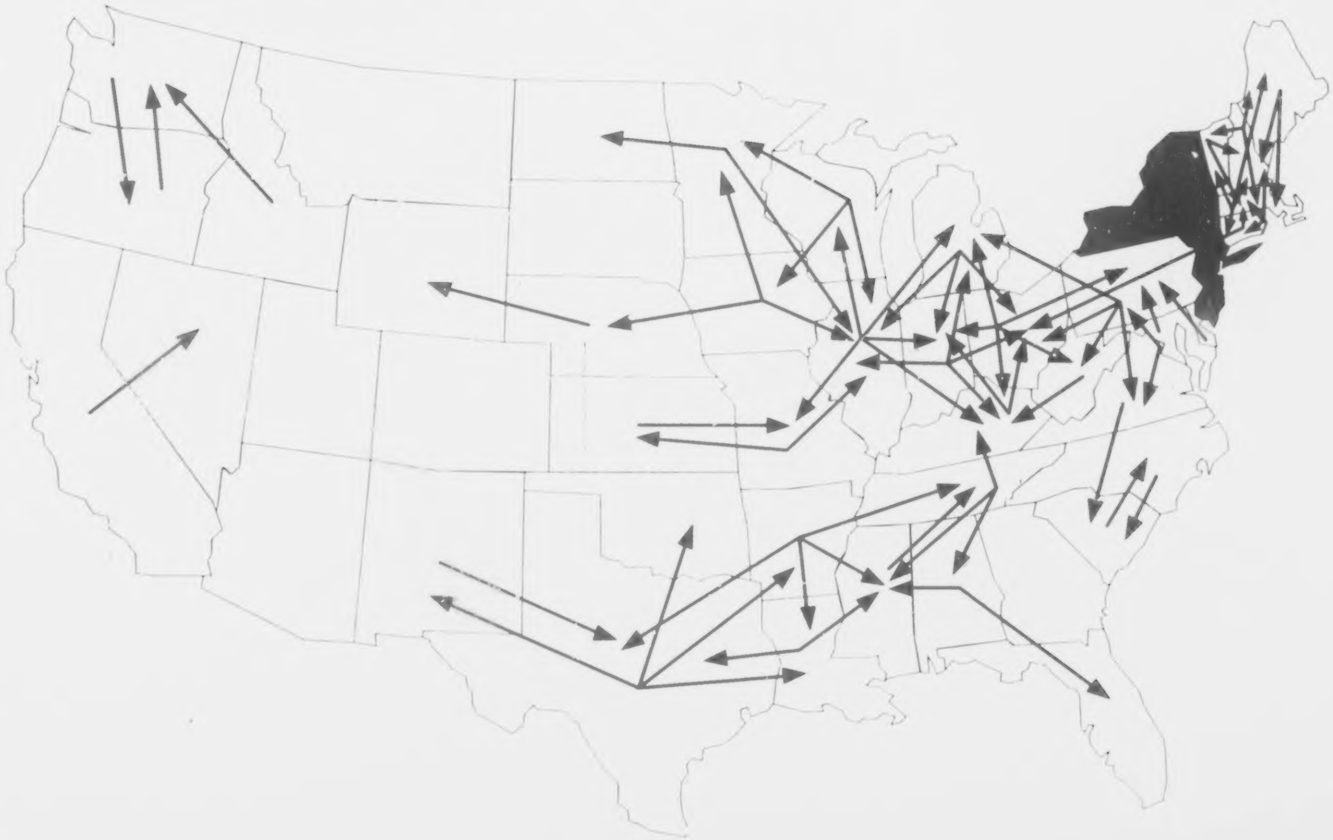
Movements of New Jersey and New York MSW (1989)

Map One

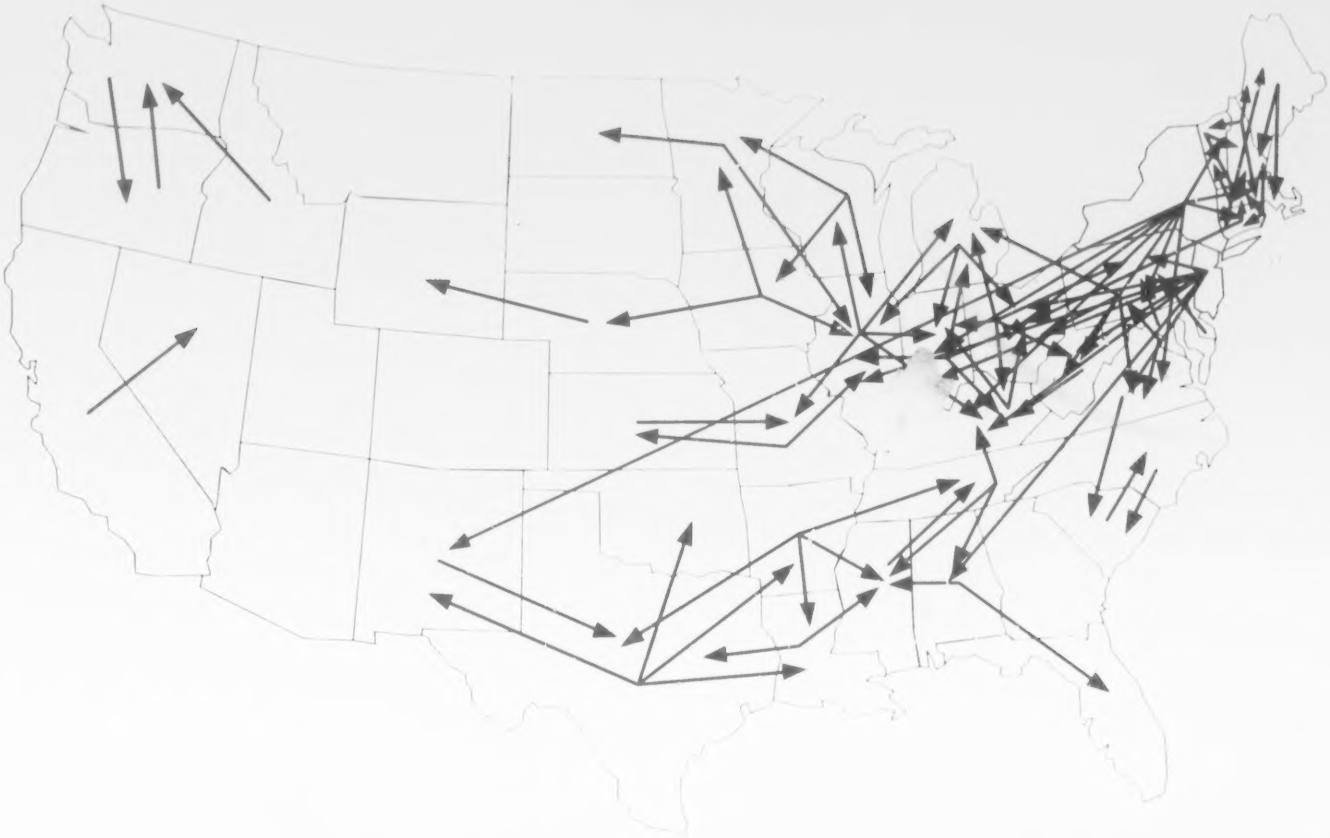

Exports from:
☐ New York
▨ New Jersey
■ Both States

Movements of MSW — 1989
(excluding NJ & NY)

Map Two

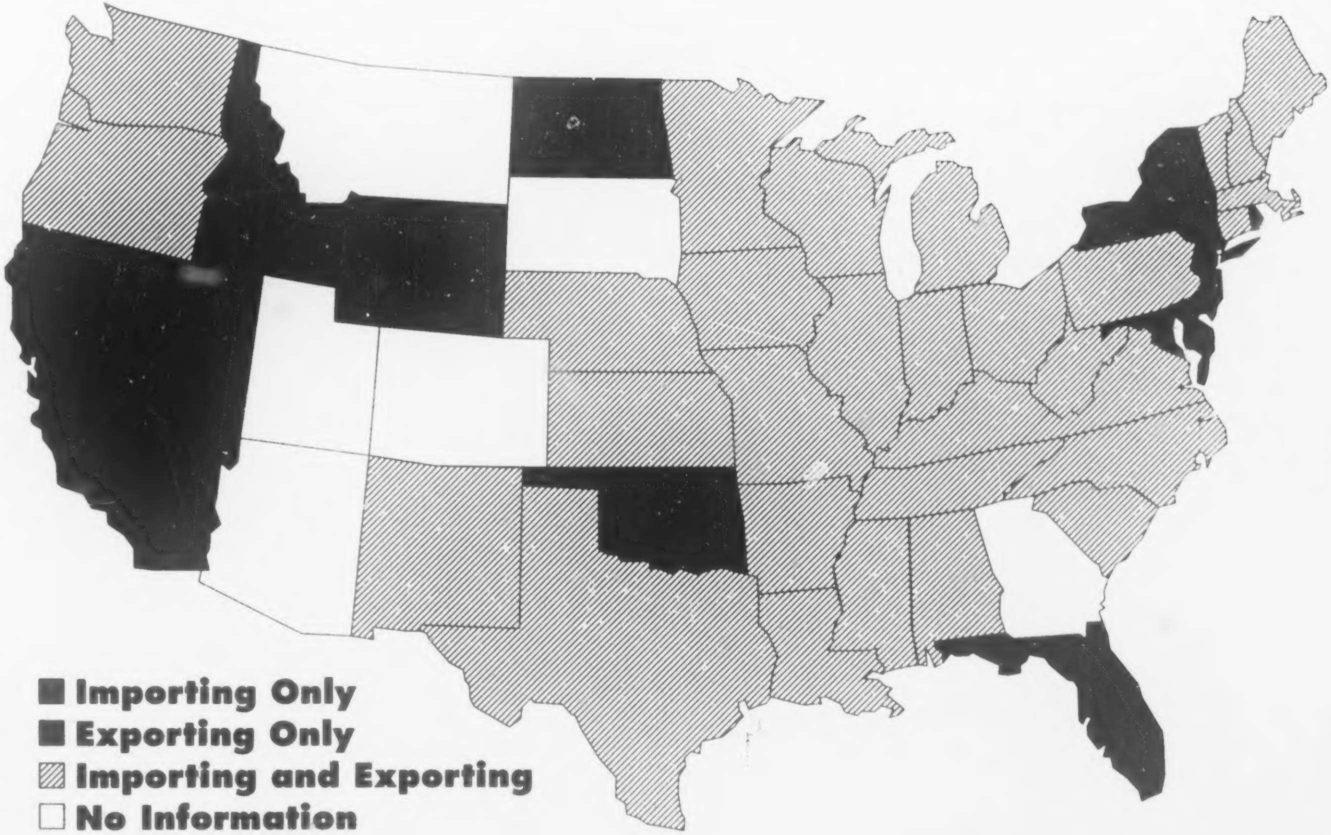


Interstate Movements of MSW (1989) **Map Three**



State-By-State Import/Export Activity (1989)

Map Four


■ Importing Only
■ Exporting Only
▨ Importing and Exporting
☐ No Information

FRIENDS OF THE EARTH℠
Environmental Policy Institute
OCEANIC SOCIETY

Testimony of

Velma M. Smith

Friends of the Earth

before the

Senate Committee on Environment and Public Works
Subcommittee on Hazardous Wastes and Toxic Substances

July 18, 1990

Distinguished Chairman, members of the Subcommittee, my name is Velma Smith, Director of Friends of the Earth's Groundwater Protection Project. On behalf of FOE, I thank you for this opportunity to testify, and I commend you for your efforts to consider thoughtfully the tensions behind and the possible solutions to the nation's painful garbage wars.

You know well that the interstate movement of garbage -- be it municipal garbage, sewage sludge, ash or for that matter industrial hazardous and "non-hazardous" waste -- has become increasingly common. No doubt you will hear stories and statistics this morning that amplify that simple fact.

You also know that those who live in the communities for which this waste is bound are, more often than not, unhappy with the prospects of hosting large garbage facilities. Communities facing proposals for new facilities ask why they should share their neighborhoods with facilities that will deal with the

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discards of other -- often far away -- communities. They protest loudly the prospects of becoming someone else's dumping grounds.

And many communities composed primarily of low-income or minority populations have already drawn the conclusion that they are being singled out -- in a insidious form of discrimination which sends the unwanted problems of the affluent into their backyards, where the local governments are ill equipped to offer them adequate protections.

Some would cast these folks as uninformed, overwrought, parochial. They are the fuel, it is argued, of the ever-dreaded NIMBY syndrome, and their uninformed hysteria must be countered with strong national efforts to assure that facilities are sited despite their opposition.

Well, what about their concerns? Is there any sound basis for wanting to keep major waste facilities out of your own backyard?

The EPA Office of Ground Water Protection has asserted, afterall, that there is a "high level" of regulatory activity for "nonhazardous" waste landfills, land application of waste, surface impoundments and waste piles. Should citizens rest easy with such assertions? We think not.

A study by EPA's Office of Solid Waste and Emergency Response, for example, paints a completely different picture.

The data presented in the Solid Waste Office study show that regulation of land disposal of supposedly nonhazardous wastes is, at best, ineffective. According to EPA,

- Approximately 90 percent of the over 16,000 active landfills have no liners to protect underlying groundwater.

- Ninety-six percent have no system to collect leachate that seeps out of the landfill.

- More than 8 out of 10 landfills fail to monitor groundwater.

- Sixty percent place no restrictions on the types of waste accepted.

- Almost 5,000 landfills are not inspected even once a year.

Should those abysmal statistics be discounted, as it were, since newer, so-called "state-of-the-art" facilities are likely to be considerably different? Again, we think not.

In EPA's Report to Congress: Solid Waste Disposal in the United States, dated October 1988, the Agency points out that "EPA found little difference in the location, design, and operation of newer municipal solid waste landfills versus older landfills." According to the Agency, there was "no real reduction in siting of municipal solid waste landfills in sensitive hydrologic areas over the last twenty years, or in a comparison of pre- to post-1980 facilities." On the subject of engineering and design controls, the Agency found a "slight increase" in improvements over the past 20 years, but they found no increase in the number of new landfills that monitor surface water or air emissions.

When it comes to the newer garbage incineration facilities, citizens again have reason to be both skeptical and pessimistic. As a practical matter, there is no federal regulation of municipal ash disposal and, while EPA has made a proposal, there are to date no final regulations governing air emissions from these facilities. As you well know, many citizens have voiced their concerns with the lack of heavy metal and dioxin emission standards and with a lack of appropriate monitoring protocols.

In addition, as the Subcommittee begins to grapple with this issue, we believe the Members must face the fact that garbage facilities -- even the better regulated and better run facilities -- are not desirable neighbors. So-called "state-of-the-art" facilities can and no doubt will continue to present problems. And even where major threats to health and environment are controlled or at least mitigated, one cannot get around the fact that a garbage facility generates truck traffic, noise, odor and potential depreciation of property values -- all acutely felt local problems that local and state governments must retain authority to address.

Thus, we urge you to resist strongly any proposals that may be offered to limit local authorities or require states to override local zoning authorities. (Such a provision was implied if not explicit in one RCRA reauthorization version under consideration in the House.)

In light of the types of problems which garbage facilities can and do present, in light of the great outpouring of citizen concern and in light of the increasing movement of garbage across state borders, Friends of the Earth supports a strong and quick response from Congress. We believe that your response should be one which aims at curtailing drastically the interstate movement of garbage and dramatically shrinking the root cause of these problems: the generation of the garbage in the first instance.

We are convinced that the interstate movement of garbage is not in the best interest of the nation for a variety of reasons.

First, Friends of the Earth believes that as long as it is relatively easy -- though perhaps not cheap -- for some communities to get their garbage "out of sight and out of mind" by shipping it to other communities for disposal, we will continue to have high waste generation rates and unimpressive recycling rates in those communities. A system which allows for communities to transfer the risks associated with garbage management to distant communities, in our view, functions as a major disincentive to waste reduction, and must be changed.

Some movement of garbage will always be required and, in some circumstances, the interstate movement of waste in accordance with cooperative regional waste management agreements may be desirable and beneficial. We envision regional agreements being most beneficial in circumstances where regional cooperation can be focused on the entire waste management spectrum -- from reduction and recycling to disposal. We are not convinced that cooperative planning can or should span hundreds of miles and many state boundaries.

Long-haul may be a way for railroads to increase their profit margin; it's not, in our view, a way to promote environmentally responsible waste management.

Second, the interstate movement of garbage -- particularly long-haul transport -- introduces its own unique set of problems that cry for regulation and oversight. Many members of Congress and members of the public were horrified at tales of garbage backhauling in vehicles that transport food products, and restrictions on such practices may be enacted by this Congress. But regardless of any restrictions imposed on the types of vehicles suitable for waste transport, there will remain the very real possibilities for accidental or purposeful but clandestine mixing of municipal garbage with other waste products or toxic materials while a community's trash is in route to a far distant garbage facility. When waste must travel thousands of miles before it is "managed" or disposed of, the adequate tracking of waste types and characteristics becomes more complex and more subject to error.

Third, we believe that the actual or proposed movement of garbage across state lines -- from the populous east coast to the open areas of New Mexico or to abandoned coal mines in Virginia and West Virginia and old bauxite mines in Arkansas, from midwestern urban centers to Indian reservations, down the infamous Tennessee-Tombigbee waterway to a poor, minority community in Alabama, or rumbling west in railroad cars that might otherwise remain empty after delivering western coal to the northeast -- all of these are demonstrations of a troubling trend.

What we see is garbage seeking the point of least resistance or, in this case, the point of least regulation.

For example, I spoke earlier this week with several people in South Dakota. That State's waste management program which holds responsibilities for hazardous waste, solid waste and asbestos as well as recycling, boasts a staff total of 11, with one slot currently vacant. The Department reportedly has an acting administrator, two secretaries and seven scientists and engineers. An additional engineer's slot remains vacant.

And it appears that those folks have been busy and will remain busy. Since 1980, the State -- and Indian reservations within the State -- have faced a variety of solid and hazardous waste disposal proposals. One such proposal -- this one for a

1-million-ton-per-year land disposal facility -- was put forward late in 1988, and when the state's regulatory staff did not meet a mandatory time limit for permit review of the facility, it found itself in court with the facility proponent. At one point, the staff, who reportedly appeared to have continuing questions about the completeness of the application, recommended approval of the permit. Two days later they recommended denial, but when the court-ordered hearing took place, the State made no case against the proposal.

Environmentalists in the State whom I spoke with see the situation as out of control. The state regulatory officials are not corrupt or uncaring, they argue, but they are underpaid and overwhelmed. And they are again and again forced into situations in which they are unable to generate their own data, answer questions for the concerned public or perform an adequate assessment of data provided to them.

Just a few short years ago, citizens in South Dakota argue, their State was hoodwinked into permitting what turned out to be a scam ash recycling operation. Throughout 1987 and into 1988, sewage sludge ash was brought into a South Dakota facility that had promised to use a cutting-edge process for extracting metals from these wastes. The promised process was not delivered, and wastes were stockpiled in buildings. Citizens sued the State and the facility to force its closure. With this type of track record, is it surprising that South Dakota residents have pressed for the opportunity this fall to vote on an initiative that will place decisions on waste facilities over a certain size directly in the hands of state legislators?

Consider another State which seems to have more than its share of garbage proposals, including what promoters call a "bold plan for the economic development of New Mexico" to be realized by bringing a quarter of the nation's garbage to the Land of Enchantment. In addition to this incredible scenario, New Mexico has been visited with proposals to site a 200-million-ton capacity landfill in Valencia County and a 7- to 10-million-ton-per-year landfill on 23,000 acres of rangeland in Hidalgo County.

Is New Mexico particularly well-suited for reviewing and regulating such facilities? From the information we have reviewed, we offer a resounding "No."

In New Mexico, a small regulatory staff is further handicapped by effective regulations which the regulators themselves have characterized as among the most outmoded in the United States. Landfills must be registered; they must be fenced; and they must maintain a 20-foot clearance to groundwater. These regulations dating back to 1976 were to be replaced by new rules late in 1988. The new rules did not require landfills to be lined, did not require installation of leachate collection, did not mandate groundwater monitoring or specify waste reduction or recycling requirements. These rules were adopted but put on hold, as it were, when associations representing local New Mexico governments brought suit.

With virtually no effective restraints on interstate movement of garbage and without an effective Federal presence in the regulation of so-called "nonhazardous" wastes, we would expect an escalation in the trend of garbage seeking homes with large spaces, low land values, overworked regulatory agencies and poorly crafted and weakly enforced environmental laws.

We are also concerned that the increasing long-haul business may be attracting investors and business people who have little experience, expertise, capital or, for that matter, interest in operating environmentally sound facilities. In some states regulations may be so lax that anyone who has read the Time or Newsweek statistics on metropolitan waste generation may run some "back-of-the-envelope" calculations and decide that they have found a foolproof get-rich-quick scheme. If land prices are low enough they may decide that they can cut the local community in on the deal with a share of tipping fees, free disposal options or the like.

But can they run a facility that will not pollute land and water? Will they be there to assume liability and take hasty action to correct any environmental violations that occur? An unfortunate experience with the Kim-Stan landfill in my home

State of Virginia tells us that, at least for some operators, the answer is absolutely not. The South Dakota recycling experience gives us the same answer, and we would suspect that only a brief search would uncover more evidence on this point.

In addition, the long-haul transport of waste, to the extent that it appears to foster the development of mega-waste facilities, may present environmental threats that are more significant than those found with smaller facilities. We have not reviewed a great deal of information on this point, but we note for the Committee that EPA's discussion of groundwater modeling accompanying its proposed rule on municipal solid waste land disposal would seem to argue against national policies that promote large facilities. According to EPA, "[h]igher levels of contamination, and thus, higher risks are associated with larger facilities that have a greater mass of waste." "Regionalization," notes the Agency, "would shift the overall risk distribution towards the higher risks associated with larger facilities, although the total number of facilities would be reduced."

Finally, but not least importantly, we believe that the current patterns of interstate movement of wastes are unsound because they are, in a word, unfair.

As we noted earlier, waste facilities -- even "state-of-the-art" facilities -- will always pose some problems.

Hopefully, with increasing sophistication in regulatory programs and with drastic reduction of waste volumes and toxicity, problems will lessen over time, but it is doubtful that the problems will disappear any time soon. And the imposition of these risks on communities which are far from the communities which reaped the economic or other benefits associated with the waste generation is fundamentally inequitable.

On the other hand, we believe that Congress must be wary of a drastic solution, shutting the gates virtually tomorrow and forcing every community to immediately handle every bit of its own waste "at home" regardless of impact. As a matter of equity, this solution appears attractive, but as a matter of environmental protection, we must recognize its drawbacks.

While we have the greatest respect for the wonders of engineering, Friends of the Earth holds to to the notion that you cannot engineer around a poor waste disposal site. This is particularly true for land disposal facilities, and a strong consensus has emerged that any liner will leak over time. Indeed, a liner in a net precipitation area must allow for some leakage -- lest you get a facility behaving like an overflowing bathtub.

There may be no site which is perfect for land disposal -- or other waste handling for that matter -- but some sites are particularly troubling from a groundwater perspective, including wetlands, floodplains and other high, unconfined water table areas, karst topography with its proclivity for unpredictable groundwater flow changes, and mine workings that offer numerous and ill-defined fracture pathways for contaminant movement.

Clearly, these particularly sensitive and unsuitable areas are not evenly distributed across the states or communities within the states, and we should not adopt policies that force siting of disposal facilities in wholly inappropriate areas.

Moreover, we should remember that we have reached today's garbage crisis and the point at which Congress is being asked to intercede after a period in which some of the more populous states sought and were denied the authority to "conserve" their disposal capacity by limiting out-of-state disposal. Some states -- perhaps New York or New Jersey -- may not be able to cope with an immediate halt to exports.

A sensible course of action may need to offer some exporting states a bit more time, not so that they will be allowed to send their discards elsewhere for decades or even years more to come, but so that they will be able to quickly wean themselves from dependence on other areas without creating environmental crises at home.

For your consideration, Friends of the Earth offers a list of suggested Congressional actions:

1. Require EPA to develop -- in short order -- a basic manifest system for tracking garbage movement. Impose requirements on waste handlers and require reporting to EPA as well as importing and exporting states. Be certain that any reporting requirements carry tough sanctions, including criminal penalties, for falsification of data. Require all facilities or proposed facilities that will handle waste moved in interstate commerce to disclose on a yearly basis those parties with which contracts for garbage collection have been made, the time-frame for the contracts and any restrictions on waste types and characteristics imposed in such contracts.

2. Please, enough with the lip service on waste reduction. Congress must get serious now on reducing the amount of waste generated. Pick up those bills that have been languishing in this Congress and previous sessions of Congress, and take steps to cut garbage by taxing the use of virgin materials, taking steps toward packaging reform, and upgrading federal procurement requirements to vigorously promote the use of recycled goods.

In amendments to the Resource Conservation and Recovery Act or other directives or, if need be, simple flexing of your Congressional oversight muscles, assure that states are required to meet specified waste reduction and recycling goals. The problems we face demand more than EPA's proposed 25% goals, and you may wish to press for a sliding scale of further reductions targetted first at those states which export the most waste.

3. Require EPA to issue final rules for municipal solid waste land disposal facilities now and empower EPA to take enforcement actions in states which fail to implement the minimum federal requirements.

4. Immediately allow for states which so choose to enact statutory waiting periods or moratoria on permit review of new facilities. Some states have already done this, though they may face the threat of lawsuit. We believe that some states may have an urgent need to call a pause in the garbage rush, and we recommend that they be allowed to apply permitting moratoria to all facilities, to facilities over a selected size or exclusively to those facilities which propose to accept out-of-state waste. We don't suggest a long-term moratorium across-the-board, because we would agree that many existing facilities are substandard and those facilities must be either upgraded or closed out. A short-term pause in permitting, however, would allow for much-needed planning and the upgrading of regulatory programs.

5. Clarify for the states and the courts that states may adopt differential permitting or tipping fees or other licensing taxes, and that such fees shall not be considered interference with interstate commerce. On a theoretical level, there may be

some merit to the argument that fee differentials should reflect accurately the difference in regulatory costs associated with in-state versus out-of-state wastes. That theory, however, presumes that there is no national interest in discouraging long-distance waste transport, and it simply ignores the fact that those states in which the regulatory infrastructure is now the poorest will be least able to accurately predict the true cost of regulation. Offer the states broad leeway on this point.

6. Act quickly to require all new facilities accepting out-of-state garbage to demonstrate financial responsibility not only for closure but also for possible corrective action. We would recommend that you also quickly phase in similar requirements for existing facilities accepting out-of-state garbage. While Friends of the Earth believes that financial responsibility requirements should eventually cover other facilities as well, we recommend immediate action in this more limited scope in order to provide another disincentive to waste movement and to assure that fly-by-night firms destined to create new Superfund sites get weeded out quickly.

6. Explore ways to protect state enforcement actions from commerce clause suits. A great deal of the debate on the scope of the commerce clause is focused on possible legislative or rulemaking actions that states might consider and how the courts would greet such actions. We have heard little debate, however,

as to whether states may be restrained from enforcement when enforcement actions are directed against facilities which take out-of-state garbage. Here the problem may rest less with what the courts would actually decide and more with what a regulatory agency may decide not to do when threatened with prolonged legal battles.

This potential problem is illustrated by the Kim-Stan case in Virginia, where a fish kill prompted enforcement action which in turn prompted a lawsuit by the operator -- based in part on allegations that the enforcement action showed discrimination against out-of-state wastes. To the extent that it can, Congress should provide the states with some protection from this sort of legal "commerce clause" bullying and intimidation.

7. Provide funding to the states to upgrade their programs for RCRA Subtitle D wastes, particularly municipal wastes. As Members of this Committee heard from waste industry representatives over two years ago, the "level of state resources for Subtitle D implementation is demonstrably inadequate...." EPA figures cited to you by the industry indicate that, on average, each state spends less than $800,000 "developing, regulating, enforcing, or overseeing a solid waste management program." That translates, according to the industry testimony, to about $170 for direct and indirect regulation of the hundreds of thousands of Subtitle D facilities in the country.

Undoubtedly, this is not the best of times for seeking new funding, but this funding is desperately needed. We would recommend that you consider, if necessary, a national garbage tax -- not a tax to balance the budget but one to bring some level of control to this garbage crisis and to fund state regulatory development. Should you find a way to fund a state grant program, we recommend that you consider a grant formula which allows a first-year disbursement only based on the amount of waste imported, thus giving those states which are now importing the most wastes the largest share. We do not recommend that that continue, however, since it would tend to encourage states to seek out-of-state garbage. We recommend that you consider a formula for out-years which would reward states that meet or exceed recycling goals and penalize those with the largest exports.

8. Set a time certain on a near-term horizon -- perhaps two to five years -- at which states with state solid waste plans that are meeting recycling and reduction goals will be able to adopt straightforward bans or other major restrictions on the import out-of-state wastes. If necessary, allow for imposition of lesser sanctions first, followed by an escalating severity of response to continued exports by other states. At the same time, we would recommend that Congress act to protect those states which have already developed state plans incorporating a "fair share" concept of waste facility siting. For example, the

State of Oregon's system of allowing waste facilities that will accommodate only a certain percentage of out-of-state waste should be ratified, not invalidated, by any action with Congress takes.

9. Finally, we again urge you not to adopt provisions requiring any overrides of local zoning.

Before I close, I would like to briefly note that we have reviewed the proposal for addressing these issues that was put forward in one of the House RCRA reauthorization bills, H.R. 3735. We have found some significant problems with the proposal, as drafted, and we have shared these concerns with House Subcommittee staff. I would be happy to share comments on this particular proposal -- either in writing or in response to questions here today -- if the Subcommittee so desires.

Again, we appreciate this opportunity to testify, and we commend your interest and your efforts to address this extremely complex and difficult problem. I look forward to answering any questions that Members of the Subcommittee may have.

TESTIMONY OF GOVERNOR EVAN BAYH
SUBMITTED TO THE SENATE ENVIRONMENTAL PROTECTION SUBCOMMITTEE
OF THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

AUGUST 6, 1990

Mr. Chairman, members of the committee. I appreciate this opportunity to provide written testimony on one of the most vexing problems facing both federal and state governments--how to manage our solid waste.

I want to express my strong support for legislation that enables states to plan for their own waste management needs and to control their future in the solid waste management area. In order to do so, states must have the opportunity to restrict or prohibit the importation of garbage from other states. For only by giving this right to the states can we ever hope to find solutions to this ever growing problem.

Let me briefly summarize the problem we are facing today in the State of Indiana. A study by our Department of Environmental Management estimates that at the current rate of disposal Indiana's existing landfills will be exhausted in less than 8 years. This number, though, is an average life expectancy for all our landfills. Many of our communities have nowhere near 8 years left. Half the permitted landfills operating in 1980 have closed already and a number of others will have to close in the next year or two. Communities all across the state are faced with the dismal prospect of having to find new disposal facilities willing to take their trash. Usually, this means significantly higher costs for our citizens.

We recently enacted aggressive recycling and source reduction legislation that focuses on creating markets for recyclable wastes and assisting community recycling projects. Our goal of recycling 35% of our solid waste by 1995 and 50% by the year 2000 is among the most ambitious in the country.

At the same time, we created a regional solid waste management planning structure that, for the first time, will institutionalize state and local government cooperation in solid waste planning. The State will be completing its 20-year solid waste plan in the next few months and the regional solid waste districts will complete their plans over the course of the succeeding eighteen months. These plans will focus on recycling, source reduction, and using traditional disposal methods in a more efficient and environmentally sound manner.

However, all our efforts are simply not enough. While Hoosiers are capable of dealing with the difficulties created by their own trash, we have recently been hit by a situation that we are incapable of entirely solving alone. Approximately two years ago our neighbors from East Coast states began literally flooding Indiana with their garbage, garbage that has been generated in their own states but which they have chosen to dispose of in Indiana. And why is this? There are a number of factors. Chief among these is the fact that in Indiana trash can be disposed of for an average of $11.50 per ton, while in many eastern states that have either run out of landfill space or have failed to properly manage their own solid waste needs, disposal costs are often more than $100 per ton. So it is pure economics. It is cheaper to transport garbage halfway across the country and dump it in Indiana than it is to dump it in New York, New Jersey or Pennsylvania.

Trash is coming into Indiana by the truckload and by the trainload. Large 18 wheel tractor/trailers are crisscrossing Indiana bound for Hoosier landfills in which to dispose of their East Coast trash. Several landfills now regularly accept semitruck loads of baled, compressed trash. Often, ten or twenty of these trucks are lined up at one time at a landfill waiting to dispose of their cargo.

Last summer, trainloads of leaking, foul-smelling garbage were hauled into Indiana from the East Coast even though it is illegal in Indiana to off-load solid waste from trains. Through efforts by our Department of Environmental Management, we were able to turn these trains around. But now we hear that the same waste is going to neighboring states and being trucked into Indiana.

And these vehicles are used for another purpose. Importation of solid waste provides the economic underpinning for backhauling, the offensive practice of using the very same vehicles that bring garbage to Indiana to bring products, including foodstuffs, to the East Coast.

Indiana is not alone in facing these problems. The difficulties caused by out-of-state trash are prevalent throughout the Midwest, and indeed in other parts of the nation. We must act to stop this problem. We must act for our citizens' health, so that our towns and businesses may grow, and to protect the integrity of our markets.

What can the states do? As governor, I issued an executive order to ensure that Indiana is doing everything in our power at the state level to mitigate this problem. I ordered strict enforcement of our existing environmental and transportation laws to stop illegal off-loading of solid waste and to keep leaking and overweight trash vehicles off our highways. I ordered regulations to be drafted to limit new landfill permits to those facilities for which a local need can be demonstrated, to stop the backhauling of food and other products in vehicles that had been used to bring trash into Indiana, and to inspect waste-carrying vehicles.

However, there is a limit to how much the states can do. Because of a Supreme Court decision, states are unable to outlaw out-of-state waste. That means that even our best efforts to manage our waste ourselves and plan for our future can be defeated by those who fail to responsibly control that which is generated within their own borders. As I noted previously, our laws are being flouted by those who use railcars to bring trash into other states and then truck it into Indiana, because it is legal to off-load railcars in those states, and the Supreme Court forbids us from prohibiting trash trucks from crossing our borders.

But you are not hampered by such restraints. The authority to prohibit the transportation of solid waste across state lines is reposed right here in the United States Congress. If states act to responsibly manage trash within their own borders, as we in Indiana are doing, they should not be forced to solve the problems of other states.

We have seen garbage rotting and leaking from railcars and trucks, some literally abandoned in the railyard or by the side of the road, We hear local government officials complain that landfill disposal costs for Indiana waste have increased as available capacity is being dedicated to more lucrative out-of-state waste shipments. We hear the concerns of citizens as loads purporting to be municipal solid waste are unloaded in the landfills near them from vehicles with out-of-state license plates. How can we calm the fears of our citizens who rightfully question whether these out-of-state loads contain hazardous or infectious medical wastes without depleting all our resources on landfill inspections and enforcement efforts? Indeed, the efforts we have been able to make to date confirm that illegal wastes are coming in.

Out-of-state trash is using up Indiana's remaining landfill capacity. It is undermining the crucially important efforts of thousands of Hoosiers who conscientiously reduce the flow of trash through recycling. It is crippling the level of public enthusiasm necessary to sustain our recycling efforts because our gains are eaten up by the ceaseless flow of out-of-state garbage into our state.

Out-of-state waste is coming into Indiana in some of the worst vehicles imaginable. Broken-down and worn-out vehicles come into Indiana daily--the leachate from their rotting garbage dripping from holes onto our roadways and train tracks. Overweight trucks are ripping up our highways, adding to our maintenance expenses.

We do not seek domestic isolationism--each state looking out for only itself. We must work together to solve common problems. However, states like Indiana must be given a chance to control their own destiny, a chance they will not have if they have to accept other people's garbage.

The National Governors' Association recognized the difficulty that states on the receiving end of interstate waste shipments face. At their annual meeting in Mobile, Alabama a few days ago, the nation's governors made the recommendations of the National Governors' Association Solid Waste Task Force their official policy. That policy requires that each state manage the waste generated within its own borders. Federal legislation to eliminate or severely restrict unwanted interstate shipments of garbage is recommended. The voice of the governors should carry particular weight in this area that has traditionally been the province of state and local government.

Indiana will take responsibility for managing its own solid waste. This will require a public-spirited commitment from all our citizens. It will not be easy, but we will do it. What we will not do is serve as dumping ground for other states.

That you are holding a hearing at all demonstrates that the United States Senate recognizes the serious concerns of the people of Indiana. I again urge you to move from this hearing to the development of legislation that will give each state the ability to effectively plan for and manage its own solid waste through source reduction, recycling, planning, and the elimination or strict regulation of unwanted interstate waste shipments.

Thank you again for this opportunity to express my views on behalf of the people of Indiana.

UNITED STATES SENATE
COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS

PUBLIC HEARING
WASHINGTON, D.C.

WEDNESDAY, JULY 18, 1990

TESTIMONY SUBMITTED BY:
STEVEN M. POLAN
COMMISSIONER OF THE
DEPARTMENT OF SANITATION
NEW YORK CITY

My name is Steven M. Polan, and I thank you for this opportunity to submit testimony today on an issue of paramount importance to New York City, the interstate transportation of solid waste. As Commissioner of the largest waste collection and disposal agency in the nation, I share the concern and frustration of everyone here over the need for effective management of the nation's seemingly intractable solid waste management crisis.

Each day, New York City generates about 27,000 tons of solid waste. Historically, this waste has been disposed of by either landfilling or incineration. Fresh Kills, the City's only remaining major landfill, currently receives approximately 17,000 tons of waste per day, and it is rapidly running out of space. The development of alternative disposal methods, for both the short- and long-term, is therefore an absolute necessity for the City and an integral part of a responsible approach to solid waste management.

In the short-term, export represents an alternative to landfilling at Fresh Kills. Although the City itself does not send any of its residential waste out of state, private collectors of solid waste--generated by the commercial sector in our City--have increasingly relied on export as a viable alternative to disposal at Fresh Kills. In recent years, this export of waste from New York has grown significantly. The New York State Legislative Commission on Solid Waste Management estimates that New York State exports 11 percent of its waste and the percentage for New York City may well be much higher.

For the foreseeable future, the option of exporting solid waste remains an essential component of a viable solid waste management program, especially for a densely populated community such as ours. That is not to say that we see the export of solid waste as the primary solution to our solid waste disposal difficulties. Exporting solid waste is clearly not the most desirable disposal choice, nor should we or any other municipality rely upon it, to any significant degree, as a long-term method of waste disposal. Even in the most efficient transport and disposal scenario, however, capacity shortfalls will occur. When they do, the availability of an environmentally sound export option to meet those shortfalls is critical. But it is equally critical that municipalities pursue alternatives to waste exportation, foremost among these are waste prevention and the enactment and enforcement of mandatory recycling laws.

New York City has embarked on an ambitious program to reduce the volume of its solid waste. As required by the State's Solid Waste Management Act of 1988, the City is in the process of preparing a solid waste management plan for review and approval by New York State's Department of Environmental Conservation. Our plan will be informed by the acknowledged integrated waste management hierarchy, which consists of (i) source reduction and reuse, (ii) recycling , (iii) resource recovery, and (iv) landfilling, combined in sensible proportions.

Recycling has become one of the City's top priorities. Last year New York City enacted a Mandatory Recycling Law, Local Law

19 of 1989, which mandates the recycling of 25 percent of the municipal solid waste stream by 1994. In addition, New York State's solid waste management plan calls for even more ambitious recycling goals to be achieved by 1997. Already our Department is collecting more than 1,000 tons of recyclables per day.

In addition--pursuant to our recycling law--the City will shortly issue regulations requiring commercial generators and private carters to recycle solid waste. These regulations implement the commercial phase of recycling in New York City and may result in a lessening of private waste haulers' dependence on the export option.

The City also is moving forward on waste prevention initiatives. Specifically, the City is considering legislation aimed at prohibiting the use of certain kinds of packaging, such as polystyrene foam. In addition, New York State's solid waste management plan mandates that New York City must reduce its solid waste by 8-10 percent by 1997, which amounts to approximately 2,200-3,000 tons per day. The City is working towards these goals, but source reduction and prevention remain in developmental stages, and the requirements for the successful implementation of these programs are not fully understood.

But regardless of which solid waste management strategies we pursue, New York cannot resolve its solid waste problems alone. It is in this arena that we wholeheartedly embrace the development and implementation of a strong federal role in solid waste management policy. There is a critical need for federal guidance in encouraging responsible waste management options, and in regulating the health, safety and environmental impacts of the these options--such actions will have a bigger payoff for the environment than those directed at defending geographic borders.

Without federal standards, source reduction and recycling are extremely difficult to enact successfully at the local level. Their success will largely depend on controlling manufacturing processes nationwide and on the purchasing habits of individuals and organizations. For industry to invest in product redesign and other waste prevention strategies, it must be made clear that waste prevention is a national policy, not simply a local government's attempt to save landfill capacity. Without a consistent federal policy, industry will find it difficult to comply with standards that vary from locality to locality and some businesses may well be tempted to abandon communities that adopt stricter standards for those that can afford more lax approaches. The recycling bill introduced by Senator Gore offers a sensible federal approach to the issue by focusing on the development of a recycling database, the promotion of markets for recycled products, and the identification of specifications and test methods for recycled products.

In contrast, the City believes congressional proposals that would allow states and localities to prohibit or otherwise restrict the interstate movement of solid waste represent a piecemeal response to local concerns about the waste disposal crisis. Understandably some communities may not want another community's garbage, but New York City and many other municipalities face a dire reality. No matter what measures our City institutes, we may be compelled to rely on limited options to handle an extraordinary volume of solid waste. By focusing on isolated segments of this problem, these congressional proposals will only serve to place further stress on already overburdened disposal resources and options at a time when New York City is vigorously moving forward to manage its solid waste.

Proponents of export restrictions suggest that these restrictions are necessary because exporting states lack the courage to take care of their own garbage. They argue that the only solid waste management plan produced in these states is to send the trash beyond their own borders. New York City takes this criticism seriously. We are prepared to manage our own solid waste, to make extraordinary investments in recycling, and, where disposal is required, seriously entertain a range of actions, including the construction of additional resource recovery capacity and the siting of landfills where space exists. Furthermore, we are willing to ensure that any municipally collected trash that leaves the boundaries of our City will be sent to an environmentally safe solid waste management facility that meets or exceeds federal environmental standards for disposal in New York or elsewhere.

But we are strongly opposed to solutions--such as export laws--that rely on economic protectionism. It is exactly this type of economic protectionism that the interstate commerce clause was designed to prevent. If the commerce clause guarantees were waived in this instance, nothing would impede a state from adjusting the market price of recyclable goods to favor its own local industries over industries from other states dealing in those same goods. By discriminating against out-of-state recyclers, manipulative pricing schemes of this sort could make recycled goods less attractive than comparable virgin goods, ultimately leading to a net increase in solid waste production to the further detriment of the environment. Certainly, this is not the consequence sought by the members of this Committee.

Drawing distinctions according to state lines fails to recognize the interdependence of our national economy. So do those "compromise" proposals which would restrict exports to neighboring states or require individual states to take care of their own waste by some date certain in the future. The borders of New York City's economy extend far beyond the City's limits--telecommunications and transportation bring the benefits of this economy to every region of the country. Along with these benefits, however, come burdens, and solid waste disposal is clearly such a burden. The drafters of the interstate commerce clause of the Constitution had great foresight in recognizing this link between a healthy national economy and unimpeded interstate commerce. Justice Jackson's summary of the Clause is apt: "Our system fostered by the Commerce Clause is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the

Nation, that no home embargoes will withhold his exports, and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality."*

New York City has established very ambitious solid waste management goals, and, we believe, innovative solid waste management programs. However, it has become obvious that to achieve these goals and to make these programs a reality will require much greater cooperation from the federal government. I look forward to working with the members of this Committee in establishing federal measures that enhance, rather than impede, responsible waste management.

*H.P. Hood & Sons v. Dowment, 336 U.S. 525, 539 (1949).

CHEMICAL
MANUFACTURERS
ASSOCIATION

WRITTEN TESTIMONY

OF THE

CHEMICAL MANUFACTURERS ASSOCIATION

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

U.S. SENATE

ON

INTERSTATE TRANSPORTATION OF HAZARDOUS AND NON-HAZARDOUS WASTE

FOR

RECYCLING, RECLAMATION, TREATMENT, AND DISPOSAL

JULY 18, 1990

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The Chemical Manufacturers Association (CMA) appreciates this opportunity to submit written testimony on issues surrounding the interstate movement of hazardous and non-hazardous waste for recycling, reclamation, treatment, and disposal. CMA is a nonprofit trade association whose member companies represent more than 90% of the productive capacity for basic industrial chemicals in the United States. Incidental to their production of these chemicals, CMA member companies generate and manage hazardous and non-hazardous waste in both wastewater and non-wastewater forms. These wastes are subject to regulation under the Resource Conservation and Recovery Act as well as other federal and state environmental statutes.

To assure the most environmentally protective treatment and disposal of those wastes, many CMA member companies transport waste across state borders either to company-owned or commercial facilities. For these reasons, CMA members are vitally concerned about proposals at both the state and federal levels to restrict interstate waste movement.

Although the focus of the Subcommittee's hearing is on municipal solid waste, CMA is principally concerned that some of the legislative proposals being considered would also restrict the management of industrial hazardous and non-hazardous waste in ways that could actually create barriers to responsible waste management practices. For example, all industrial waste is by definition a "solid waste" as that term is defined under RCRA. Thus, any legislative proposal that addresses "solid waste" will have a broad impact on industrial hazardous and and non-hazardous waste, as well as on municipal "solid waste." Accordingly, these remarks are directed primarily at demonstrating how restrictions on the interstate transport of solid waste are likely to interfere with the responsible management of industrial hazardous and non-hazardous waste.

I. Industrial Wastes Should Continue to Move Freely in Interstate Commerce To Facilitate Proper Recycling, Treatment, and Disposal.

The waste treatment and disposal market has traditionally been viewed as a national market. For example, when EPA evaluated the available capacity for treating various hazardous wastes, as part of the RCRA Land Disposal Restrictions rulemaking, the Agency focused on nationwide capacity, rather than looking at capacity on a state-by-state basis. In fact, responsible recycling, treatment, and disposal of industrial waste depends heavily upon the existence and development of national and regional markets for each of these services.

First, different types of industrial wastes call for different management techniques. For an industrial plant located in one state, the nearest facility that offers the most appropriate treatment technology may be located in annother state. This is often true where major concentrations of industrial activity are situated near the border between two states.

Second, some waste disposal techniques are best suited to, or even limited to, areas that have specific geologic or hydrogeologic conditions. While states should be able to identify appropriate geologic locations for some of there may not be suitable locations in each state to appropriately manage each waste stream generated in that state.

Third, recycling, treatment, and disposal technologies ultimately depend upon market forces to sustain them. Economies of scale will often be vital to the successful development of such facilities. On a state-by-state basis, the volume of industrial wastes suitable for a particular technology may not economically support duplicative recycling, treatment, or disposal facilities in each state. Instead, a recycling, treatment, or disposal facility needs access to appropriate wastes from a large area in order to develop and sustain these technologies.

Finally, facilities are only permitted to receive specific waste codes. Facility siting and permitting entails striking the appropriate combination of technology, location, and consistent waste volume. Free movement of industrial wastes in interstate commerce means that every facility need only be permitted to handle those waste codes most suited to a specific technology and location.

These concerns are by no means unique to the chemical industry or even to industrial generators as a group. On the contrary, these same considerations affect EPA and its counterpart agencies in state and local government, all of which face the challenge of finding appropriate recycling, treatment, or disposal facilities. EPA, for example, must find suitable facilities for wastes removed from Superfund sites as part of fund-financed removal or remedial actions. State and local environmental agencies also conduct clean-up activities that present the need to find suitable off-site waste management facilities. Finally, many government agencies generate their own solid wastes. Examples include publicly-owned wastewater treatment plants that generate sewage sludge and research laboratories at universities and hospitals that generate laboratory wastes. In sum, government agencies, like private industry, all require access to appropriate recycling, treatment, and disposal facilities, which may not be located in the generator's state.

For all of these reasons, free interstate movement of industrial hazardous and non-hazardous waste is vital and should not be impeded by legislation aimed at addressing the municipal solid waste problem. If, in spite of these needs, the Subcommittee does place restrictions on the interstate transport of "solid waste," (a term that includes industrial hazardous and non-hazardous waste, see 42 U.S.C. 6903 (27)) it is essential, at a minimum, that any such legislation preserve the free interstate movement of the following categories of industrial waste:

1. Industrial hazardous waste. For the reasons discussed above, national capacity and national markets for hazardous waste management are critical to encourage recycling and other pollution

prevention activities and to assure environmentally protective treatment and disposal of wastes that cannot be eliminated or recycled. In addition, CMA is concerned that anything other than a national waste management system will create severe disruptions to the Land Disposal Restrictions (land ban) program. EPA based its land ban treatment capacity analyses on national treatment capacity. Barriers to interstate or regional waste transport will place generators in the position of not being able to treat their waste because EPA identified capacity is not available in the geographic unit (state or region) where the waste is generated.

2. Industrial non-hazardous waste transported to a hazardous waste treatment or disposal facility, even though the waste is not legally required to be managed as a hazardous waste. Many companies send certain non-hazardous wastes to hazardous waste facilities for reasons of corporate policy or to respond to specific concerns of area residents. This practice should not be curtailed.

3. Industrial hazardous and non-hazardous waste transported to recycling, recovery, or reclamation facilities. As explained earlier, the economic survival of recycling, recovery, and reclamation technologies generally depends upon assuring access to a wide regional market of appropriate waste. These emerging technologies offer great promise for reducing the overall solid waste disposal problem in the United States. It would be ironic if the Subcommittee, in an effort to address that larger problem, adopted legislation that curtailed the markets upon which these recycling, recovery, and reclamation technologies depend, thereby limiting their usefulness.

4. Industrial hazardous and non-hazardous waste transported by a generator to a facility in another state owned or operated by the same company. "Intra-company" shipments of industrial waste allow a company to integrate its waste management operations to manage all or most of its own wastes at company-owned or -operated facilities in various states. Because the company that generates the waste typically has the greatest knowledge of that waste and its properties, it is in the best position to select the appropriate treatment or disposal technologies (and facilities) for that waste. Moreover, through an integrated waste management system, a company can achieve economies of scale by combining similar or compatable wastes from several generation sources as well as site waste management units in the "best" locations among the company's facilities. Based on several company's experiences, the public seems more accepting of a company trying to site a unit to manage its own waste, even if the waste comes from the company's other facilities. Finally, integrated waste management allows a company to maintain control as well as responsibility for its waste. Unencumbered intra-company waste transport provides further incentives for integrated management and, therefore, should be encouraged.

II. On-Site Management of Industrial Wastes is Generally Preferable But Is Not Always Feasible.

CMA believes that on-site management of solid waste by the generator is generally preferable to off-site transportation. Unfortunately, it simply is not feasible for all generators to manage all industrial waste on the specific site where they are generated. As a result, it is essential to preserve the free movement in interstate commerce of industrial waste.

Many companies that are dedicated to on-site management have found that they need to regionalize their waste management, developing specialized facilities on different sites. Development of these integrated waste handling facilities is based on many considerations such as use of recycled materials, availability of natural resources, or manpower.

Second, many small and mid-size companies that generate industrial solid waste lack the technical capability, the capital, or the space to develop on-site management alternatives for their wastes. These companies, which probably number in the tens of thousands, depend totally on access to off-site facilities.

Third, many innovative recycling and treatment technologies cannot operate economically or efficiently below a certain minimum scale (in terms of waste volume). Companies that generate small volumes of waste thus cannot be expected to invest in these desirable technologies. If they cannot turn to off-site facilities, the result will be that the wastes may be managed in a less appropriate fashion, with a greater potential for mismanagement.

Fourth, as noted above, many companies are constrained by geologic or geohydrologic factors in their ability to manage their wastes on-site. Absent access to off-site facilities, these companies would have very limited waste management options available to them.

Fifth, many companies manage some of their wastes on-site but cannot manage all of their wastes or treatment residues on-site. Again, these companies require access to off-site facilities.

Finally, many of these considerations apply not only to wastes generated today by private industry, but also to wastes generated and/or managed by government agencies.

III. Waste Minimization Initiatives Will Reduce, But Not Eliminate, the Need to Transport Industrial Waste for Recycling, Treatment, or Disposal.

Voluntary waste minimization plans now being implemented by many companies will help reduce the volume of industrial waste that will require transport in the future. In addition, various waste minimization proposals are now being considered by Congress. However, no waste minimization program will eliminate the need to rely on interstate transport of industrial waste for recycling, treatment, or disposal in the foreseeable future.

First of all, the 1984 RCRA amendments and the resulting EPA rulemaking, continue to expand rapidly the universe of waste classified as "hazardous" under RCRA. Recent examples include the new Toxicity Characteristic rule and the removal of the Bevill Amendment exemption for certain mineral processing wastes. In addition, several RCRA reauthorization proposals would dramatically expand the scope of the toxicity characteristic. As more wastes are classified as "hazardous," treatment will eventually be mandated under the Land Disposal Restrictions, thereby further taxing existing treatment capacity.

Second, apart from wastes that are newly generated or newly regulated, a steadily growing volume of wastes from Superfund clean-ups and RCRA corrective actions will also require recycling, treatment, or disposal. For all the reasons set out earlier, companies--and government agencies--managing these wastes will require access to appropriate facilities, which may be located in other states.

IV. The Chemical Industry is Committed to Reducing Waste Generation and Chemical Releases from Its Facicities.

While waste minimization will not eliminate the need for out of state waste management capacity, the chemical industry still continually looks for opportunities to reduce waste generated by our manufacturing processes--generating less waste and more product makes good economic as well as environmental sense. Last April CMA instituted a formalized, industry-wide program to reduce chemical releases into the environment--the Waste and Release Reduction (WARR) Code--as part of the industry's Responsible Care initiative. Through this code, an obligation of CMA membership, facilities will strive for continuous and long-term reductions in environmental releases in order to increase environmental protection as well as the margin of safety in our plant operations for our employees and the communities surrounding our facilities.

CMA members implement WARR at the individual plant level using a multi-step process that includes:

- inventorying wastes generated and releases to all environmental media;
- evaluating the potential impact on employees and the public;
- establishing priorities and goals based on factors including potential health and environmental impacts, level of community exposure, and public concern;
- developing and implimenting a reduction plan based on these priorities;
- measuring progress; and

- communicating on a regular basis with employees and the public.

Perhaps the most important aspect of WARR is a continuing commitment by CMA and its member companies to promote practices that protect the safety and health of our employees and the residents of our communities. This includes encouraging and assisting others, including our suppliers and customers, to adopt this same public committment to safety and environmental protection.

V. Congress, EPA, and the States Should Work With Generators of Industrial Solid Waste to Assure Appropriate Management of Such Waste.

As described earlier, CMA believes that the free interstate transport of industrial hazardous and non-hazardous solid waste is essential in order to insure the sound and responsible management of such waste. For this reason, CMA cannot support legislative proposals that would authorize the states to ban, or erect substantial barriers to, such interstate transport.

A far more constructive approach would be to require states to develop solid waste management plans, along the lines originally contemplated by Subtitle D of RCRA. Borrowing from the concept of capacity assurance plans (under CERCLA Section 104(c)(9)), these plans should be designed to assure that each state has or is developing sufficient capacity to manage its fair share of solid waste. That share may be satisfied in several ways such as developing unique facilities which satisfy a regional or nation-wide need, constructing more general facilities to manage at least the volume of solid waste likely to be generated within that state over the next 20 years. The requirement to prepare these plans will encourage the states to face the difficult issues raised by solid waste management and help to avoid future "wars between the states" over where and how to manage solid waste.

Written Comments
of
The Council for Solid Waste Solutions
before the
Senate Environment and Public Works Committee
Environmental Protection Subcommittee
July 18, 1990

The Council for Solid Waste Solutions appreciates this opportunity to present its views on regulation of interstate transportation of solid waste, especially as such regulation may affect recycling in the United States. The Council urges that any federal legislation regulating interstate transportation of solid waste be crafted to preserve and encourage recycling efforts.

THE COUNCIL FOR SOLID WASTE SOLUTIONS

The Council for Solid Waste Solutions is a program of the Society of the Plastics Industry (SPI), and was formed by a group of plastics resin producers in 1988 to address the role of plastics in the growing solid waste disposal problems of state and local governments across the United States. The mission of the Council is to develop positive solutions to the disposal concerns raised by plastics. The Council believes that the nation must adopt an integrated solid waste management strategy which emphasizes waste reduction, recycling and resource recovery before land filling. The key to solving the nation's solid waste problem is development of a recycling infrastructure and a recycling ethic among American consumers.

A critical part of the Council's mission is to help build such an infrastructure. Plastics recycling, in combination with waste reduction and resource recovery, can substantially reduce the stream of plastics materials which end up in landfills. The Council sponsors a wide variety of research and development activities to promote recycling technologies. We expect this work, among other things, to help determine the most effective methods, both institutional and technological, to retrieve plastics from solid waste streams for recycling, to develop uses for recycled plastics and to develop strong markets for recycled plastics.

The Council also serves as a clearinghouse to the public and industry for information on plastic recycling. Perhaps most importantly, the Council is assisting government officials and private parties to establish pilot recycling programs to demonstrate the benefits and viability of plastics recycling. The Architect of the Capitol will be initiating one such program on Capitol Hill in the near future.

Despite the efforts of the Council and others to institute recycling as a feature of American life, the real power to influence and encourage (or discourage) recycling lies with government. Federal, state and local laws can significantly promote or discourage the growth of recycling as an industry and the development of markets for recycled materials. The Council is working with federal, state and local governments and other groups to devise appropriate and workable laws and rules which would promote the recycling of plastics.

Interstate Transport of Waste

As Congress prepares to consider amendments to the Resource Conservation and Recovery Act, municipal solid waste management tops the list of subjects that need to be addressed. Many bills introduced in the House and Senate this year addressed solid waste management issues, including restrictions on interstate transport of solid waste. Senator Coats has also developed a stand-alone provision allowing states to restrict import of solid waste immediately.

Meanwhile, many state and local governments are struggling with the amount of garbage they must manage and the limited options that exist for managing it. Landfills currently in use were sited years ago, before today's heightened concern about their long-term environmental impacts. Additionally, Americans are generating more solid waste per person today than ever before, and this waste is taking more landfill space just as landfill space is running out. Siting new landfills is extremely difficult, and in any event there is the growing awareness that solutions beyond traditional land disposal must be found.

In some instances, states with inadequate landfill capacity have resorted to the export of municipal solid wastes, either to other states with excess capacity or to international destinations. As a result, the interstate transport of wastes has become an important issue, raising cries from the receiving states for laws restricting interstate transport of municipal wastes and demands for federal requirements for states to provide their own waste management solutions.

While the Council is aware of the concern about interstate transport of waste, and recognizes that some restrictions on interstate transport may have merit, we are concerned that Congress draft restrictions carefully so that they do not impede the growth of recycling. Because many recycling activities are in their infancy, sources of recyclable plastics are not well established, and in most cases extend across state lines. Also, recycling facilities do not yet exist in every state. Therefore, it is common for materials separated for recycling in one state to be transported across state lines for processing. In the case of plastics, restrictions on interstate transport of recyclable plastics could disrupt regionally based recycling facilities, at just the point when these facilities are starting to provide an alternative to landfilling of plastic waste. For that reason, the Council urges that any legislation restricting interstate movement of municipal solid waste exempt solid waste transported "for recycling purposes."

Exempting wastes transported "for recycling purposes" can be accomplished simply by excluding these materials from the definition of "solid waste" for the purposes of the legislation's restriction of interstate transport. Although the term "for recycling purposes" could raise interpretative issues, we do not believe it would create a loophole through which wastes plausibly destined for recycling could be transported interstate for disposal. In almost every case, wastes moved across state lines for recycling purposes will be "source-separated" by material or at least by category of material. Unseparated municipal solid waste is unlikely in any case to be shipped for recycling purposes.

Sometimes storage before recycling may be necessary, since supply may outstrip demand as markets, facilities and infrastructures for processing recyclables are established. In most cases, where shipment is not directly to a recycler, shipment across state lines for storage is unlikely, since separated materials are more likely to be stored locally until agreements are reached for processing of the material. Shipment for storage across state lines is more likely to occur where metropolitan areas straddle two or more states. In those cases, shipment across state lines (albeit for local storage) of separated recyclables may be more pressing, pending agreements with recyclers. This kind of storage is especially foreseeable and also should not be discouraged by legal restrictions. Making interim storage more difficult can only increase the reluctance of local governments to institute programs to separate recyclable materials from the solid waste stream, an important step in establishing a recycling infrastructure.

Conclusion

The Council appreciates the opportunity to comment on the subject of interstate transport of solid waste, and encourages the Subcommittee to keep the goals and opportunities of recycling in mind as it considers solid waste legislation addressing this subject. Relatively simple precautions in any legislation restricting interstate movement of solid waste can assure that the legislation does not impede the development of a viable recycling infrastructure.

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STATEMENT OF THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

INTERSTATE SHIPMENT OF SOLID WASTE

PRESENTED TO

THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

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The Institute of Scrap Recycling Industries, Inc. (ISRI) is pleased to have this opportunity to present its views on legislation to restrict the interstate shipment of solid waste. ISRI represents 1,750 processors, brokers, and consumers of recyclable paper, glass, plastic, metal and textiles, and suppliers of services and equipment to the industry. ISRI member companies are all private, profit-oriented businesses.

ISRI is concerned that legislation to restrict the interstate shipment of solid waste could balkanize existing recycling and cause economic havoc in the United States. Approximately half of the United States' production of finished iron and steel, stainless steel, and copper is based on scrap material inputs. Nearly a third of domestic paper and aluminum production is based on scrap. In total, some 96 million tons of recycled American materials move in interstate and international commerce every year. Ironically, and clearly in opposition to repeatedly state Congressional intent, if the Congress grants states the ability to prohibit the interstate shipment of solid waste, recycling -- in total -- is jeopardized.

The fundamental cause of this problem is based on the definition of "waste." Waste implies disposal -- a complete lack of value. And yet, valuable raw materials, purchased for recycling, which recyclers divert from the waste stream, may be classified as a waste all the way through the re-manufacturing process. Thus, while the concern which might prompt legislation to restrict inter-state shipment of solid waste is clearly one of safe and proper disposal, the safe and efficient reuse of recyclable material is put at risk because it is classified, inappropriately, as waste.

While it is true that some states, Georgia in particular, have taken steps to distinguish between recovered materials for recycling and waste destined for disposal, most states have not done so. More importantly, the Federal government has not done so. Therefore, if the Congress is determined to delegate authority over the interstate shipment of solid waste to the states, it must be explicit as to what is to be restricted and what is not. Clearly, at a minimum, recyclable glass, plastic, paper, metal, and textiles which are primarily bound for reuse should not be subject to restrictions in interstate commerce.

In addition, in drafting legislation, the Congress should bear in mind that nothing recycles 100 percent; the law of entropy applies to recycling as to everything else. There will be a portion of the recyclable which requires disposal, whether it is the residue from newsprint de-inking or from aluminum smelting. The fact that this small residue remains, meaning that the majority of the material has been recycled, is a net "plus" and the legislation should recognize this fact: recycling residues should be treated preferentially since they represent only a fraction of that which otherwise have to be disposed of.

In sum, ISRI urges that the Congress proceed with great caution in this area to avoid significant damage to the on-going and growing recycling effort. Scrap is not waste and this distinction must be contained in any legislative approach to the disposal problem.

We look forward to working with the Committee on these and other issues.

NEDA
RCRA

National Environmental Development Association • 1440 New York Avenue NW Washington DC 20005 • [illegible]

July 27, 1990

The Honorable Max Baucus
United States Senate
706 Hart Senate Office Building
Washington, DC 20510-2602

Dear Senator Baucus:

On behalf of the National Environmental Development Association's RCRA Project (NEDA/RCRA), we are pleased to submit the following comments to the Subcommittee on Environmental Protection concerning the Subcommittee's July 19 hearing on interstate transportation of solid waste.

NEDA/RCRA consists of members from the consumer products, chemical, petroleum, steel, aluminum, electronics, and mining industries. These member companies share a common commitment to address all environmental issues in a responsive and reasonable manner and have joined NEDA/RCRA to address RCRA reauthorization and other related issues in the same fashion.

NEDA/RCRA supports the state solid waste management planning process. The solid waste crisis is centered on the diminishing landfill space needed for municipal solid waste, resistance by communities to site new landfills and the increasing amount of garbage being transported out-of-state for disposal. As a condition for approval of the solid waste management plan, each state should be required to site appropriate municipal solid waste management facilities within its borders.

The plan should include, but not be limited to identification of type and quantity of MSW; recycling goals; markets; programs for implementing recycling, etc. In addition, the state plan should contain a schedule for the siting and permitting of necessary facilities to attain the state plan's stated goals for recycling, waste-to-energy and landfilling.

In the absence of implementing these provisions,the EPA Administrator should have the authority to act to site and permit such facilities. The attainment of the objectives respected in the state plan must be a priority issue. If states act accordingly, prohibition on waste transportation would become less important. The facilities to deal with the longer term MSW capacity could be constructed and permitted.

The incentive to encourage the planning process, by allowing states with approved plans the authority to levy differential fees on solid waste that is imported into a state for purposes of treatment and disposal is another option. States with approved plans will need the ability to control the waste flow into the state in order to keep the approved plan viable.

As a last option to encourage state solid waste management planning, states with approved plans should be given the authority to prohibit the transportation of waste into the state for purposes of treatment and disposal. Prohibitions applied to the municipal solid waste stream could be beneficial in protecting the integrity of the state plan. Care must be taken to ensure that prohibitions do not interfere with a state plan that incorporates interstate pacts and cooperative agreements as a method of compliance with any established capacity assurance requirement.

Differential fees or interstate prohibitions should only apply to municipal solid waste and such municipal-like solid waste from commercial, institutional, municipal, or industrial sources that, if disposed of, would not be required by Subtitle C to be placed in a facility permitted under section 3005 (c).

The state solid waste management plan should not require states to develop plans for the siting of a full range of industrial non-hazardous waste facilities. These wastes are best handled on a regional and/or national level because the facilities are often highly specialized, costly to construct and terribly expensive to operate. It makes little sense for each state to construct and maintain a full range of these facilities.

Transportation prohibition authority should not be extended to include industrial non-hazardous waste. Currently, these wastes are properly managed. However, should the transportation prohibitions be extended to include industrial non-hazardous waste, the following activities should be exempted to ensure that access to the much needed capacity for the industrial waste stream is not limited:

- **Transport of non-hazardous solid waste between facilities owned by the original generator.**

  A prohibition of "intra-company" transport of waste denies a company the ability to fully utilize an integrated waste management program. It also prevents a company from choosing from the full range of disposal options, including transfer to a company owned and operated facility out of state.

- **Transport of non-hazardous solid waste to a hazardous waste facility.**

  Companies may choose to ship their non-hazardous waste to hazardous waste treatment facilities because of the nature of the waste. If the prohibition were enacted, a company might be forced to use an in-state facility that they believe is not as protective of human health and the environment.

- **Transport of non-hazardous solid waste and municipal solid waste for recycling purposes.**

  Materials en route to recycling facilities should be excluded from any fee or prohibition structure.

These exemptions are designed for the protection of human health and the environment and would not interfere with the prohibition of municipal solid waste.

We appreciate this opportunity to comment on this issue, and we look forward to working with you and your staff on the reauthorization of RCRA. If you have any questions concerning our comments, please call me.

Sincerely,

Jeffrey M. Reamy
Project Director

cc: Cliff Rothenstein

(RCRA):RC1443LAZ

RECOMMENDATIONS FOR ADDRESSING
THE ISSUE OF
INTERSTATE TRANSPORT OF MUNICIPAL SOLID WASTE

WASTE MANAGEMENT, INC.
Submitted to the Senate Subcommittee
on Environmental Protection
of the
Committee on Environment and Public Works

July 18, 1990

INTRODUCTION AND OVERVIEW

Waste Management, Inc. (WMI) is pleased to have this opportunity to assist the Chairman and his colleagues on the Subcommittee in examining the issue of the interstate transport of municipal waste. WMI is the nation's leader in recycling and waste treatment and disposal services. We serve more than 8 million single family residences and over 700,000 businesses in 1,200 cities and towns spread throughout 48 states. We have contracts to provide municipal recycling services to almost 200 towns serving over 1,000,000 households. We own and operate about 128 sanitary landfills, and have 300 collection divisions. In short, Waste Management has a compelling interest in any Congressional consideration and response to issues affecting the transportation, flow and market for municipal waste services.

It is especially appropriate for you, Mr. Chairman, to be examining this issue in depth because -- as we hope this hearing will show -- the interstate transport of solid waste is inextricably tied to other issues that are to be addressed as part of the RCRA reauthorization process. For example, federally mandated environmental controls, development of recycling markets, and siting and construction of modern waste disposal capacity are just a few of the elements of the Chairman's own RCRA Reauthorization Bill, S. 1113, which bear on the interstate transport issue.

By establishing minimum environmental controls by which all States must abide, The Chairman's bill would preclude the establishment of "pollution havens" that would serve as an incentive to move wastes long distances to cheap, sub-standard disposal facilities. By spurring development of comprehensive recycling programs, S. 1113 reduces the States' dependence on incineration and landfilling, and, in turn, reduces the need to export waste. For States that have been slow in replacing lost capacity with modern, state-of-the-art disposal facilities, the Chairman's bill recognizes the need to facilitate siting decisions so that municipal waste can be managed as near the point of origin as possible.

In addition to these more traditional environmental concerns, however, Congress is now examining more direct and simplistic methods for reducing the flow of municipal wastes across State lines. Therefore it is of vital importance for Congress to understand the market dynamics and other economic considerations that are reflected in the current interstate commerce in municipal waste. With this understanding, we believe that Congress is in a better position to formulate a responsible policy that preserves the benefits of regional waste services and cooperation among neighboring States while eliminating the real and perceived abuses of moving waste over distances unjustified by economic and environmental considerations.

WMI is especially concerned that, in its deliberations, Congress understand and acknowledge important distinctions between two types of markets: long-haul markets, wherein waste would typically travel several hundred miles across several state boundaries; and short-haul, or -- more accurately -- regional markets, where waste may typically travel less than a hundred miles but, coincidentally, may cross a state line in so doing.

Long-haul transport of municipal waste is a relatively recent, hopefully temporary, artifact of capacity shortages in the Northeast that have forced waste generators to seek disposal in other parts of the country where, all too often, lax environmental standards have created cheap outlets for waste. WMI believes that these practices are undesirable and should be ended promptly. On the other hand, short-distance transportation among neighboring States has occurred for many years and for good economic and environmental reasons. Hundreds of natural "waste-shed" areas have evolved near State borders due to rational economic considerations and mutual cooperation among neighboring communities. An appropriate federal response to the interstate issue should recognize the importance and validity of these historical arrangements.

To assist in a better understanding of these arrangements, WMI undertook an effort to analyze the waste service practices in several different parts of the country. Our intent was to provide a sample of the diverse conditions that have led to the flow of waste across State boundaries. In the following discussion, which is based on the results of our analysis, WMI examines more closely the regionalization of solid waste management, its characteristics, benefits, and the general effects of any precipitous disruption to these arrangement.

THE REGIONALIZATION OF SOLID WASTE MANAGEMENT

Early in the nation's development, all municipal solid waste was managed locally. Dumping and open-air burning at the nearest convenient site was commonplace. Land was perceived as a boundless resource and few anticipated that such practices posed threats to public health or the environment. By the 1930s, sanitary landfills began replacing open dumping, but landfills continued to be sited for convenience -- usually on the least expensive local lands, such as marshes, quarries, or gravel pits. Even as awareness of the environment grew in the 1960s and 1970s, most American cities had become fully dependent on local landfills to dispose of their solid waste.

Today, solid waste management is in transition. Completion of the network of interstate highways between 1950 and 1970 enabled economical solid waste management at sites of varying distances from the place of waste generation. The suburbanization of American cities, and its inherent demand for efficient land use, precluded local landfilling in many areas, and provided additional impetus toward regional management of solid waste. The 1965 Solid Waste Disposal Act began the processes of tightening environmental requirements, and elevating costs, at waste disposal sites nationwide. As federal and state statutes strengthened these safeguards in the 1970s and 1980s, substandard municipal landfills began to close, further limiting local solid waste management options.

In many parts of the country, it is no longer economical or environmentally acceptable to manage solid waste locally. Today's solid waste management market is typically a broad "waste-shed" comprised of numerous cities and rural areas, all within boundaries determined largely by economics. A natural consequence of this regionalization is that some regions encompass jurisdictions from two or more states. For example, in one area that we examined, a border town in one state chose a large, low-cost facility located in a neighboring state, five miles away by interstate highway, over a smaller in-state facility at higher cost, accessible only by 30 miles of secondary roads. In short, these markets are first regional and only incidentally interstate.

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THE COMPLEXITY OF REGIONAL, INTERSTATE SOLID WASTE MARKETS

Regional solid waste markets are complex, reflecting regional politics, geography, demographics, and transportation networks. Their complexity alone helps explain why solid waste services would suffer serious disruption if they had to adjust quickly to a ban on interstate waste shipments.

Our analysis indicated widely different arrangements for residential, commercial, and industrial collection and disposal. In our study areas, for example, most residential waste is handled under contracts of varying terms and conditions between city or county governments and waste haulers. Sometimes haulers have identified disposal arrangements under these contracts. In other instances, haulers periodically seek competitive prices for disposal under a "spot" market in hopes of maximizing profits. In all large cities that we examined, and in most small ones there are literally hundreds of haulers. In some areas, independent waste brokers match haulers to disposal facilities, again on a "spot" basis. Usually, regional markets are served by a multitude of transfer and disposal facilities that are both publicly and privately owned and include landfills, resource recovery plants, composting sites, and materials recycling centers.

Another dimension of complexity that we identified is that some regional markets are dynamic -- meaning volume, prices, and outlets change routinely while others are less so. For instance, in regions characterized by numerous disposal options, waste flows can fluctuate daily. In the Northeast spot markets, gate prices (disposal prices quoted for non-contract disposal) can change daily and thus alter flows among competing facilities. Annual changes in contractors serving a city's residential districts can significantly alter where waste is disposed. Rapid loss of capacity due to rigorous enforcement of environmental controls, such as occurred in New Jersey, or losses due to the reaching of capacity, may also redirect flows within the region. Even within our own company we may wish to redirect flows on a temporary basis where, for example, we may be doing some engineering work at one of our facilities. In contrast, where disposal capacity is limited to just a few facilities, regional market boundaries may fluctuate less frequently as public officials prefer to lock-in contract prices over longer periods of time.

Finally, the nature of regional markets can vary substantially from place to place. Some jurisdictions, such as Chicago, contract for removal of waste but leave the choice of disposal method and location to the transfer station operators. Others, including Boston, contract separately for collection and disposal, but link the two by specifying the disposal alternatives that each collection agent must use. In still a third type of regional market, such as in of Rhode Island or Delaware, all residential solid waste must be disposed in state-owned and run facilities.

Not surprisingly, our analysis showed that the availability and efficient use of the regional transportation network may play an important role in how waste moves within interstate regional markets. In two of the three areas we examined in depth, the interstate highway system allowed garbage trucks to complete each trip more quickly to an across-the-border facility than was possible for an in-state facility. This translates into fewer trucks on the road, fuel savings, movement of trucks along larger and safer highways, and all resulting in a more cost-effective service for the customers.

Other factors that we identified and which contribute to the unique nature of regional solid waste markets include jurisdictions' preferences for some waste management technologies over others, the degree of development of recycling programs (and markets), the simple availability of land (Washington, D.C. is one prime example), and host communities' desire for revenue generation from fees paid by neighboring jurisdictions.

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EFFECTS OF DIVERSE CONTROLS OR BANS

The complexity of regional solid waste markets suggests that exact responses to a ban as well as their economic importance will differ from place to place. Yet, we believe that a ban would cause serious disruption and, perhaps even true emergencies over the short term. Based on our analysis of solid waste markets in New England, the Mid-Atlantic region, and the Mid-West, shortfalls in capacity following a ban would likely be addressed with some combination of the following:

- Shifting waste to currently operating, but under-used public facilities, sometimes at great distances from the point of generation

- Reopening of landfills that had been closed because they failed to meet current standards of environmental protection

- Implementation of flow controls.

These responses would in turn, have widely varying effects, to include:

- Price increases

- Increased environmental risks
- Premature dependence on underdeveloped recycling markets
- Loss of host community benefits
- Balkanization of states
- Increased incentives for illegal dumping or "sham" recycling

In addition, proposed re-direction of waste to alternative facilities may require significant involvement by the states into local waste management arrangements, under emergency powers, because interjurisdictional flows within the state may be just as problematic as interstate flows.

Price Increases

Prices for solid waste management would likely increase to the degree that bans on interstate shipments of solid waste limited either the number of firms serving an area or the number of facilities available to it. In fact, there is some history to indicate that prices would increase both in the near term and over the long term as alternative disposal options would have to be developed in-state. How long depends on many factors, but a typical waste facility project may take from three to seven years to develop before service may begin.

In several New England metropolitan areas, for example, an interstate ban might simply eliminate private firms from bidding on certain solid waste management services. Solid waste that would have been shipped out-of-state in the absence of a ban would be re-routed to in-state facilities. In the short run, limited competition could increase the prices that remaining firms were willing to accept. If prices increased by 25 percent to 50 percent in response to a ban -- a reasonable estimate when considering comparable experiences in other parts of the country -- annual solid waste management costs in many major metropolitan areas would increase well above the national average of $60 per person and consume roughly one percent of median household income. According to the Office of Technology Assessment, in contrast, the average American family spends less than one half of one percent on solid waste services.

As markets adjusted to fewer participants and a smaller number of disposal options, prices would be expected to increase further. Over a two or three year period, for example, a doubling or more in the cost of waste management would not be unrealistic. These increases would be passed on to consumers as increased taxes (to the extent that limitations on state tax collections permitted); a shift to direct household charges for solid waste services (which could have greater effects on low-income households than on others); or reduced public services in competing programs such as health, social support, or public safety.

As noted earlier, several economic efficiencies would be lost, such as transportation efficiency. For example, one New England border town currently sends about half its municipal waste to a private incinerator located just over the border in a neighboring state. Aside from the obvious contractual problems raised by a ban on interstate shipments, such an action would likely force the city to send its waste to the nearest available in-state landfill. Compared to the 45-minute trip via Interstate highway to the out-of-state incinerator, the trip to the closest alternative site in-state would take about two hours over secondary roads. While the disposal prices at the two facilities are comparable, we estimate that the difference in transportation cost would add between $600,000 and $750,000 (a 70 percent increase) to the city's solid waste disposal bill each year.

In the Mid-West, where solid waste management costs are generally half what they are in New England, cost increases could be even more dramatic. In the one mid-western metropolitan area, two major landfills were closed recently by court order and state enforcement actions. Tipping fees charged by the remaining landfills showed a dramatic increase almost immediately.

Increased Environmental Risks

Precipitously applied restrictions on interstate controls raise threats to public health and the environment. For example, residential solid waste in Rhode Island is controlled by a state authority that owns and operates the Central Landfill for the benefit of all state residents. However, the State's commercial solid waste is disposed not only at the Central Landfill, but also at privately owned landfills within the state, and in private facilities outside the state.

Prices for disposal of commercial waste at the Central Landfill are about 15 percent less than they are elsewhere in New England. This reflects, in part, the State's intent to compete with commercial facilities in Massachusetts and, in part, the lack of environmental controls at the site (the landfill is unlined among other deficiencies). In the face of a ban on interstate shipments, the commercial waste now going out-of-state would probably have to go to the Central Landfill, creating a significant potential for environmental degradation.

In New Jersey, a total interstate ban anytime during the next five to seven years -- before the planned waste-to-energy plants and numerous recycling programs come on line -- would cause a waste disposal crisis that, in our judgement, may require emergency action by the governor. Because alternative disposal options would be unavailable in the near term to handle the waste New Jersey currently ships out-of-state, emergency legislation or executive orders would probably completely control flows. Lack of capacity may force local jurisdictions or the State to reopen sub-standard disposal sites that had previously been closed by the State for environmental reasons. Even adequate existing facilities would be inundated with waste flows and truck traffic for which they are ill-prepared to accommodate. In an emergency situation, environmentally inadequate disposal options, such as keeping poorly performing sites open longer than prudent, may appear relatively more attractive than garbage piling up in the streets. Overall, we fear the tendency would be to lower environmental standards.

Premature Dependence on Underdeveloped Recycling Markets

Faced with a sudden ban on interstate shipments, many communities may be forced to accelerate municipal waste recycling programs. Although seemingly a beneficial result, the reality is that the absence of either a well-developed infrastructure to manage wastes for recovery or reuse, or of markets to absorb secondary products, may seriously destabilize an important, but fragile industry.

Moreover, recycling could not be sustained in some states that relied on their neighbors to draw enough recovered glass, aluminum, plastic, or paper to keep a recycling facility economically viable. In other states, recycling programs would be hastened, subject to the handling and reprocessing capacity and to the formation of sufficient demand for recycled products. As one example, WMI is concerned with the economics of paper recycling in the several Plains States where the nearest de-inking facility is 800 miles away.

Boston, as another example, would appear to be largely unprepared to mount a significant recycling program quickly. Only 100 tons of residential waste -- about one-tenth of one percent of total generation -- was recycled in 1989. The City currently has no collection of residential recyclables or collection of yard waste for compost. It maintains only two drop-off centers for newsprint, glass, and plastic and maintains no public programs for recycling batteries or waste oil (private programs are available for these wastes, however). Even with the noblest intentions, Boston may be several years away from a significant recycling rate for its waste.

Loss of Host Community Benefits

Some host communities would clearly lose considerable income if interstate shipments of solid waste were eliminated. Communities that had any financial dependance on tipping fees from out-of-state users would have to raise the cost of solid waste management in their own communities, increase general taxation, or curtail some other public programs. In the Mid-Atlantic and Mid-West states, the loss of host community fees from out-of-state waste would reduce city income by hundreds of thousands of dollars a year.

Cities and/or counties with disposal sites that offset the cost of their own solid waste disposal by accepting out-of-state waste would bear even greater financial burdens. In some locations, losses of this nature would range between several hundred thousand dollars for a small facility to several million dollars for a larger one. In one Mid-Atlantic county, for example, estimated losses associated with the elimination of host community fees and free disposal are more than $9 million a year.

Balkanization of States

Just as workers, manufactured goods, professional services, and investment capital freely cross state borders, municipal waste freely crosses state lines within regional waste sheds all across America. In fact, our research suggests that perhaps 15 million tons of solid waste moves across the borders of over 40 states every day. Less than 10 states report no movement of solid waste across their borders, or have no information to that effect.

Once states begin to ban interstate waste flows, retaliation of one kind or another is possible. Many metropolitan areas act in concert for purposes of transportation, economic development, or environmental quality planning. What happens to these usually fragile relationships if the message is "every man for himself"?

Increased Incentives for Illegal Dumping or "Sham" Recycling

One especially unfortunate consequence of a dramatic price increase in waste services would be the additional incentive for illegal activity. For example, some experts estimate that up to a quarter of New Jersey's waste may bypass flow controls illegally, via hauling of waste directly out-of-state rather than through transfer stations or by processing waste through so-called "sham" recycling centers. Allegedly, these facilities may charge generators high prices for recycling, but in fact recycle only small portions of each truckload and transship the rest out-of-state at low cost.

Scarce capacity and flow controls have driven the price of waste disposal in New Jersey high enough to create incentives for such activities. Compared to local disposal costs of about $100/ton, for example, some Ohio sites 350 miles from New Jersey charge $30/ton. Extra transportation costs to Ohio range from $5/ton for trucks that return with other cargo to $20/ton for trucks that must return empty. Thus, an independent hauler can make an extra $1,500 per trip by simply violating flow controls.

With high costs already providing a stimulus to such activities, the cost inflation that would likely follow a ban on interstate shipments would only exacerbate the problem, and place greater strains on state oversight and enforcement resources..

BENEFITS OF REGIONAL SOLID WASTE MANAGEMENT

Regionalization of solid waste management is a direct result of the public's demands for environmentally safe and cost-effective services. As such, regional management provides many benefits to the American public, including:

- Integrated application of advanced waste management technologies
- Environmentally safe solid waste services

- Reasonably priced solid waste management services,
- Direct benefits to communities that host regional facilities, and
- Efficient land use

Limiting the natural reach of regional solid waste markets by superimposing artificial state boundaries would result in certain losses of some or all of these benefits.

Integrated Application of Advanced Waste Management Technologies

Integrated waste management enables handling different components of the solid waste stream with a range of technologies customized to promote environmental protection at low cost. These diverse processes require service areas large enough to make each process economically attractive. Consequently, in areas that have implemented an integrated approach, numerous jurisdictions have joined forces to gain needed scales of operation, sometimes intentionally making capacity available to outsiders to ensure that facilities cross their economic thresholds.

The recent growth in resource recovery facilities, which often require a scale of operation beyond the capacity of any single jurisdiction, was made possible, at least in part, by a recognition that solid waste markets could be regionalized. Many such facilities across the country rely on the scope of regional markets to sustain safe and efficient operation. Some have even secured long-term contracts guaranteeing minimum waste flows from numerous jurisdictions within natural market regions.

Environmentally sound specialization of waste management options -- monofills for incinerator ash, composting of food and yard waste, or recycling of glass and aluminum, for example -- also require broad regional sources to assure that demand is sufficient to keep operations economical.

Environmentally Safe Solid Waste Services

In response to the public's demands to minimize environmental risks, solid waste management has grown into a specialized field that requires substantial capital investment in preventative measures, monitoring and testing equipment, and response capabilities. As a result, landfill costs may routinely exceed $500,000 per acre for development. For example, where communities rely principally on landfills for disposal, handling solid waste has become relatively more economical at a few large, regional facilities that can afford the modern control technologies and management expertise to ensure safe operation, than at many smaller, local sites with less ability to invest in environmental controls.

Notably, large private landfills serving broad regions have demonstrated their willingness to make such investments to a greater extent than have smaller, municipal ones. In a 1986 EPA survey, for example, over 60 percent of all private solid waste landfills had groundwater monitoring controls. In contrast, only 35 percent of municipal landfills had such equipment.

Reasonably Priced Solid Waste Management Services

Solid waste management facilities serving broad regional markets generally offer the lowest prices to consumers for two reasons. First, it is almost axiomatic that large regional facilities will be far more economical to operate than smaller community facilities. These economies of scale can be passed on to the public as cost savings.

Second, the competition from several large facilities bidding for the right to serve a given community puts pressure on bidders to keep rates low. In Phoenix, for example, the city puts out for bid, every five years, individual contracts for residential solid waste services for each of its five districts. City crews compete with many private companies and the least cost bidder is awarded a five-year contract. Similarly, competition serves to keep rates low in Boston, where the city contracts for services in 11 separate districts every three years.

Direct Benefits to Communities that Host Regional Facilities

Many communities have chosen to host regional facilities in exchange for a wide variety of direct benefits. Communities often enjoy a percentage of tipping fees that can range from 30 cents per ton to well over $1.00 per ton. In a 1988 survey of 13 New Jersey landfills, for example, host communities enjoyed an average of $1.20 per ton in fees from private landfill operators. In other states, host communities enjoy free waste disposal, enhanced emergency response infrastructure, new roads, parks, medical training, and other amenities.

Efficient Land Use

Some communities simply have little land that is suitable for solid waste management. Others have transportation networks that favor solid waste movement in one direction over another. In either case, solid waste management services can be concentrated on suitable parcels of land, served by suitable transportation corridors if they are planned and sited regionally.

CONCLUSIONS AND RECOMMENDATION

The above discussion demonstrates that the free market, with an important exception, has served society well in accelerating the necessary transition from small, sub-standard, and costly waste disposal options to the modern regional services so prominent today. Regionalization means:

- State-of-the-art technology and rigorous environmental protection

- Economies of scale for all types of waste management services for all users of the services.

- Efficient land use

- Rational use of the transportation network and other infrastructure

- Competitive pricing for the consumer

- Direct benefits to host communities.

The important exception to these benefits is the unnecessary transport of municipal waste across long distances due either to avoid the expense of rigorous environmental controls or as an approach that puts off the hard decision of siting needed capacity closer tc home. The challenge, then, is to develop a policy response that eliminates this abuse while preserving the benefits of interstate commerce with measured government involvement.

To that end, WMI recommends to the committee that an appropriate federal policy include the following:

1. All States should be adopting strict environmental controls for municipal waste disposal so that cost differences that result from inadequate regulation do not provide incentives to move waste unreasonable distances.

2. All states should be required to facilitate the siting and construction of modern waste service facilities, to include significant development of recycling capabilities, which will eliminate unreasonable dependence on interstate transport while eliminating all dependence on environmentally sub-standard facilities.

3. States should be given significant discretion to control municipal waste flows from distant States, but somewhat more limited discretion, phased in over time, to control waste flows within interstate regional service areas so as not to disrupt or

prevent regionally-based solutions to our national solid waste management problems.

4. Regionalization should be actively promoted as an environmentally and economically useful response to an area's waste management problems. Private sector initiatives, with active participation of all affected political units, should be facilitated through streamlined decisionmaking processes.

5. Special considerations should apply to recyclables and special waste such as medical waste to ensure that widely divergent state actions do not serve to disrupt the development of economically viable services for these waste.

6. Sanctions should be applied by both the federal government (i.e., limits on Superfund and other environmental grants and financing) and by complying states (i.e. differential taxation) against States that do not aggressively develop the capacity necessary to manage waste near the point of origin.

We believe these concepts will serve to minimize unnecessary dependence on interstate transport while preserving economically and environmentally sound waste management services.

We applaud the Chairman's initiative to examine this very complex and difficult issue and offer our support and assistance in developing an appropriate federal response.

90-111 A

CRS Report for Congress

State and Local Discrimination Against Import of Solid Waste: Constitutional Issues

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CRS

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SUMMARY

With existing landfills filling up and new ones hard to open, more and more localities are being forced to send their trash to distant disposal sites. The result has been the enactment by state and local jurisdictions of laws that ban, or less severely discriminate against, the import of waste into the enacting jurisdiction.

The most substantial constitutional issues raised by such state-imposed discriminations arise under the "dormant commerce clause," an implied restriction in the Constitution's commerce clause forbidding states to place undue burdens on interstate commerce. Under this implied restriction, states may incidentally burden interstate commerce to further public health and safety goals; by contrast, state actions seen as economically isolationist are *per se* invalid. The Supreme Court in 1978 applied the dormant commerce clause to void a New Jersey statute closing the state's borders to almost all waste from other states. The statute, it held, impermissibly attempted to isolate New Jersey from a problem common to many states through a barrier against interstate trade.

The Supreme Court, however, left open the question whether restrictions on out-of-state waste applicable solely to government-owned disposal sites are constitutional. The Court's decisions in other factual settings have held that when a state thus acts as a market *participant*, rather than as a market *regulator*, it is immune from dormant commerce clause scrutiny.

Numerous lower-court decisions have now applied this "market participant exemption" to state and local waste import bans, ruling unanimously that while bans applicable to all disposal sites within a jurisdiction are unconstitutional, those confined to *government-owned* landfills are permissible. In addition, these cases teach that (1) a ban confined to government-owned sites may stand even when the government site is the only one in the jurisdiction (as long as private sites are allowed), and (2) the dormant commerce clause applies with equal force to waste import bans imposed by state *and local* governments.

State reciprocity requirements for the receipt of out-of-state waste were struck down in the one known case on the topic. Discriminatory fees (charging more for disposal of waste coming from outside the jurisdiction) are also subject to commerce clause scrutiny, though no constitutional defect was found in the one disclosed case owing to the market participant exemption.

Constitutional attacks on waste import discriminations under the due process and equal protection clauses have been uniformly unsuccessful.

No commerce-clause issues are raised by pending *congressional* bills on interstate waste. Congress may either directly ban shipment between states, allowing individual states to waive the ban, or immunize state-imposed restrictions from scrutiny under the dormant commerce clause.

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STATE AND LOCAL DISCRIMINATION AGAINST IMPORT OF SOLID WASTE: CONSTITUTIONAL ISSUES

How to dispose of the Nation's solid waste is today a ubiquitous topic. Existing landfills are rapidly filling up and closing; proposed new ones, assuming they can meet stringent environmental controls, spark intense local opposition. Hence, more and more states, particularly in the densely populated Northeast, are sending their garbage to distant venues -- often hundreds of miles away in other states.[1] The result in the past two decades has been enactment by states, counties, and towns of laws that ban, or at least discourage, the disposal within the enacting jurisdiction of solid waste originating outside the jurisdiction.

This report looks at the constitutional issues raised by these state and local discriminations against outside solid waste.[2] First, we address "dormant commerce clause" restrictions on the states -- the constitutional issue receiving the most extended treatment in the cases, and the same close attention in this report. Next, the report surveys two other constitutional provisions explored by the courts (equal protection and due process) and one apparently not yet addressed (impairment of contracts). Finally, we discuss why there are no serious commerce clause issues in connection with foreseeable actions *by the Congress* permitting greater state and local control over transboundary movement of solid waste.

The preceding sentence warrants underlining. Commerce clause issues are relevant to interstate waste flow, and thus of interest to Congress, chiefly as a limit on how far *states and localities can regulate in the absence of congressional authorization*. Should Congress decide to act, however, the commerce clause imposes on it but scant restraint. As this section of the report explains, there is little question that the clause authorizes both of the approaches to enhancing state and local control embodied in pending congressional bills.

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[1] *See, e.g.*, Office of Technology Assessment, *Facing America's Trash: What's Next for Municipal Solid Waste?* (1989); "Landfill Closings: Costly Crisis for the Northeast," Wash. Post, Dec. 14, 1987, at A1, col. 1.

An Ohio official asserts that in 1987 his state imported 7,000 tons of solid waste daily from the eastern seaboard. Celebrezze, *Ohio Proposes Solutions for its Solid Waste Problems*, 18 Env't Rptr. (Curr. Devpmts.) 2303 (1988).

[2] For other analyses of the topic, see Kovacs and Anderson, *States as Market Participants in Solid Waste Disposal Services -- Fair Competition or the Destruction of the Private Sector?*, 18 Env'l Law 779 (1988); Celebrezze, *Ohio Proposes Solutions for Its Solid Waste Problems*, 18 Env't Rptr. (Curr. Devpmts.) 2303 (1988).

"DORMANT COMMERCE CLAUSE" ISSUES

Introduction

On its face, the commerce clause of the Constitution is only a grant of power to the Congress -- namely, power "[t]o regulate Commerce ... among the several States ...."[3] Supreme Court decisions have long recognized, however, that the commerce clause contains by implication a restriction as well: a limit on the ability of states to regulate interstate commerce, even in the absence of congressional action, when such regulation places an "undue burden" on that commerce.[4] This implied restriction is popularly dubbed the "dormant commerce clause." Its existence is grounded in the Supreme Court's view that in granting Congress power over interstate commerce, the Framers were giving effect to their conviction that "our economic unit is the Nation," not the individual states. Thus, "one state in its dealings with another may not place itself in a position of economic isolation."[5]

Of course, precisely what constitutes an "undue" burden is the sticking point; there has emerged from the court decisions no bright-line test to separate "due" from "undue." Particularly subtle is the balancing test applied by the Court where the state statute on its face regulates intra- and interstate trade evenhandedly, effectuates a legitimate (non-protectionist) interest, and has only incidental impact on interstate commerce. Such state laws --

> will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.[6]

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[3] U.S. Const. art. I, § 8, cl. 3.

[4] *See, e.g.*, Great Atlantic and Pacific Tea Co. v. Cottrell, 424 U.S. 366, 370-372 (1976). This limitation on state action can be traced back to the Court's 1852 decision in Cooley v. Board of Port Wardens, 53 U.S. (12 How.) 299.

[5] H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 537-538 (1949). As stated elsewhere by the Court: "[T]his Nation is a common market in which state lines cannot be made barriers to the free flow of both raw materials and finished goods in response to the economic laws of supply and demand." Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 803 (1976).

[6] Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970) (citation omitted). For a good example of a facially nondiscriminatory statute found invalid under the *Pike* test, see Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977).

On the other hand, the determination whether a state burden on interstate commerce is constitutional is relatively easy when the state statute *on its face discriminates against articles from out of state*. The Supreme Court has asserted on numerous occasions that the dormant commerce clause *must* invalidate a state law where its necessary operation is to obtain local benefit by throwing the attendant burden on those outside the state.[7] That is, state laws embodying economic protectionism are *per se* invalid. The clearest example of such protectionism, in the Court's view, is state legislation that *explicitly* singles out interstate commerce for burdens not imposed on intrastate commerce.[8] Such "facial discriminations" are subject to the strictest scrutiny, and, where shown to be protectionist, will invariably be struck down.

City of Philadelphia v. New Jersey[9]

This 1978 Supreme Court decision on state discrimination against out-of-state waste is the leading case in the field. Before the Court was a New Jersey statute that, as implemented, closed the borders of the state to almost all waste from other states. Suit was filed by operators of private landfills in New Jersey, and by several cities in other states that had agreements with these operators to accept their wastes. After holding that the state law was not preempted by the federal Resource Conservation and Recovery Act,[10] the Court addressed whether the New Jersey law ran afoul of the dormant commerce clause.

A threshold commerce clause issue, whether transactions involving an allegedly valueless substance like solid waste can be regarded as "commerce" at all, was quickly dispatched. While granting that a state may ban the import of out-of-state articles where their worth in interstate commerce is outweighed by the dangers they pose (as with disease-carrying objects), the Court rejected the notion that any object of trade can, by definition, be excluded from commerce-power scrutiny at the outset.

The Court then proceeded to the core question: whether the New Jersey ban comported with the dormant commerce clause. Or, as the Court stated it, "whether [the state ban] is basically a protectionist measure, or ... a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental."[11] In deciding this root question, the Court explained that it was the means chosen by the state, not the purposes asserted by it, that were controlling. Whether New Jersey's purpose in enacting the ban was to preserve the environment or save its citizens money was of no moment, only whether it sought to achieve its purpose by discriminating against articles of commerce coming from outside the state in the absence of some reason, apart from their origin, to treat them differently. In short, legitimate goals can be paired with illegitimate means.[12]

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[7] *See, e.g.*, South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177, 185-186 (1938).

[8] City of Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978).

[9] 437 U.S. 617 (1978).

[10] The Court found in RCRA no congressional intent to preempt the field of interstate waste management or transportation. To the contrary, noted the Court, Congress expressly provided in RCRA that "the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies." *Id.* at 620-621 n.4.

This analytical framework virtually dictated the Court's conclusion. In its view, the ban on out-of-state waste had the effect, even if not the intention, of imposing on out-of-state commercial interests the full burden of conserving the state's remaining landfill space. As such, it was a constitutionally impermissible attempt by New Jersey "to isolate itself from a problem common to many by erecting a barrier against ... interstate trade."[13]

As a final matter, the Court explained that bans such as New Jersey's cannot be likened to state quarantine laws, which generally survive dormant commerce clause attack. Quarantine laws, it said, do not discriminate against interstate commerce as such, but simply prevent traffic in health-threatening articles whatever their origin.

The "Market Participant" Exemption to the Dormant Commerce Clause

City of Philadelphia was as interesting for what it did *not* decide. Expressly left unanswered was whether a state or local government, consistent with the dormant commerce clause, can adopt a restriction on disposal of out-of-jurisdiction trash applicable solely to landfills *owned by that government*.[14] The issue is no small one; fully eighty per cent of landfills receiving municipal solid waste in the United States are state or locally owned.[15] The New Jersey ban struck down in *City of Philadelphia* applied to wastes destined for *any* solid waste disposal site in New Jersey -- *whether public or private*.

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[11] *Id.* at 624.

[12] *See also* Hardage v. Atkins, 619 F.2d 871, 873 (10th Cir. 1980).

[13] 437 U.S. at 628.

[14] 437 U.S. at 627 n.6.

[15] EPA, Subtitle D Study: Phase I Report table 4-2 (1986). Of the roughly 9,000 landfills known to be receiving municipal waste, 77.9% are owned by local government, 1.4% by state government, and 3.9% by the federal government. Privately owned landfills make up the remaining 16.7%. The hefty majority of government-owned landfills will be somewhat offset, however, if reports that privately owned landfills are, on the average, much larger than their government-owned counterparts prove to be true.

The public/private distinction had become important in commerce clause jurisprudence due to a Supreme Court decision handed down just two years before *City of Philadelphia*. In *Hughes v. Alexandria Scrap Corp.*[16] the Court (6-3) immunized from dormant commerce clause scrutiny those situations where a state acts solely as a *market participant*, rather than as a *market regulator*. At issue there was the payment of Maryland state funds as bounties to encourage removal of abandoned cars from state roads and their sale to *within-state* scrap metal processors. The Court discerned nothing in the commerce clause that barred a state, "in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others."[17]

Since *Hughes*, the Supreme Court has reaffirmed the market participant exemption on three occasions, making plain that the concept is firmly emplaced.[18] In *Reeves, Inc. v. Stake*,[19] the exemption was applied (5-4) to sustain a state preference for its own residents in the allocation of cement manufactured at a state-owned plant. The state's refusal to sell to out-of-state buyers was deemed "protectionist" only in the trivial sense that it "limited benefits generated by a state program to those who fund the state treasury and whom the state was created to serve."[20] In *White v. Massachusetts Council of Construction Employers*,[21] the exemption led the Court (7-2) to uphold a municipal requirement that at least half the work force on *city-funded* projects be composed of city residents. And in *South-Central Timber Development, Inc. v. Wunnicke*,[22] the exemption was reaffirmed even though Alaska was held not entitled to invoke it on the facts presented. *South-Central Timber* instructs that a state is eligible to invoke the market participant exemption only when the contested regulation affects the *very same* market as the one in which the state participates.[23]

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[16] 426 U.S. 794 (1976).

[17] *Id.* at 810.

[18] For lower court decisions applying the market participant exemption outside the waste import area, see County Commissioners of Charles County v. Stevens, 473 A.2d 12, 18 n.4 (Md. Ct. App. 1984).

[19] 447 U.S. 429 (1980).

[20] *Id.* at 442.

[21] 460 U.S. 204 (1983).

[22] 467 U.S. 82 (1984).

[23] Alaska had a regulation providing that the state would sell certain timber from state lands only under a contract requiring purchasers to process the timber within Alaska before shipping it out of state. The market participant exemption did not extend to the regulation, held the Court, since the state's participation was in the timber *sales* market, not the post-sale timber *processing* market. Theorized the Court:

Thus, it appears that a solid (though shifting) majority of the Supreme Court's justices holds that when the state itself is merchant or customer, the commerce clause does not apply. Moreover, the exemption's applicability does not appear to depend on whether the state or local government is acting in a traditional governmental role, or is instead entering a private market to operate a commercial venture.[24]

Alas, however, the U.S. Supreme Court has yet to address how the market participant exemption applies to our topic here -- state and local measures discouraging the import of out-of-jurisdiction waste. To date, that task has fallen to the lower courts, as follows.

Waste Import Bans: Lower Court Rulings

Many court decisions since *City of Philadelphia* have wrestled with dormant commerce clause issues raised by state and local solid-waste import bans. These bans were not necessarily absolute -- some merely imposed preconditions on waste import that were not imposed on within-state waste. For example, the would-be importer might have to obtain government permission to dispose in the jurisdiction. In each court case, however, the precondition for import was not satisfied by the plaintiff, resulting in a ban on out-of-state waste as applied to that plaintiff.

Almost unanimously, the cases teach four things:

- *Bans limited to government-owned landfills.* Bans on the disposal of solid waste originating outside the jurisdiction that apply to *any* disposal site within the jurisdiction run afoul of the dormant commerce clause. By contrast, bans confined to *government-owned* disposal sites are permissible, due to the market participant exemption.

- *Absence of private landfills.* A ban confined to government-owned disposal sites is permissible even when the government site is the *only* disposal site in the jurisdiction -- as long as no legal barriers are imposed on construction of private landfills, government attempts no hoarding of suitable sites, and private

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> The limit of the market participant doctrine must be that it allows a State to impose burdens on commerce within the market in which it is a participant, but allows it to go no further. .... Unless the "market" is narrowly defined, the doctrine has the potential of swallowing up the rule that States may not impose substantial burdens on interstate commerce ....

Id. at 99 (footnotes omitted).

[24] *See* Shayne Bros. v. District of Columbia, 592 F. Supp. 1128 (D.D.C. 1984).

landfills, if they existed, would not be barred from accepting out-of-jurisdiction waste.

- *State versus local waste-import bans.* The dormant commerce clause applies with equal force to import bans imposed by states *and political subdivisions of a state.* Also, the fact that a local jurisdiction's ban applies to within-state waste from outside the locality, in addition to out-of-state waste, does not negate the facial discrimination against out-of-state waste.[25]

- *Hoarding of natural resources.* Any exception that might exist to the market participant exemption where a state seeks to hoard its natural resources, as suggested in Supreme Court decisions, does not apply here. Solid waste landfills are not "natural resources."

Apparently the first decisions in the area were a pair handed down in 1980 by the New York Court of Appeals. In *Duchess Sanitation Service v. Town of Plattekill*,[26] challenge was brought to an ordinance forbidding anyone other than those who reside or do business in the town from depositing there garbage from outside the town. The ordinance was held to violate the commerce clause, largely because its only possible legitimate purpose, protection of public health, could have been achieved as well by means that did not discriminate against interstate commerce -- such as an across-the-board limit on the amount of waste that could be deposited.[27] However, in the companion case, *Monroe-Livingston Sanitary Landfill v. Town of Caledonia*,[28] a seemingly indistinguishable ordinance was sustained on the ground that plaintiff landfill operator had not shown that it accepted, or was likely to accept in the future, waste from outside the state.[29]

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[25] Of the text principles listed, the footnoted sentence is the only one on which there is a split of authority. See the discussion of Evergreen Waste Systems, Inc. v. Metropolitan Service District, *infra* at 10.

[26] 51 N.Y.2d 670, 435 N.Y.S.2d 962, 417 N.E.2d 74 (1980).

[27] The same point was made in *City of Philadelphia* with respect to New Jersey's waste import ban. 437 U.S. at 626-627.

[28] 51 N.Y.2d 679, 417 N.E.2d 78.

[29] This ground for sustaining the town ordinance, that plaintiff had not demonstrated interstate impacts as applied to it, would have led a federal court to dismiss the action owing to lack of *standing*. In any event, should the plaintiff here ultimately develop realistic prospects of out-of-state customers, this suit presumably could be refiled, probably with very different outcome.

A vigorous 3-judge dissent in *Monroe-Livingston* argues that despite the exclusively intrastate nature of plaintiff's waste suppliers, there were secondary interstate effects requiring a holding that the ordinance was unconstitutional under the dormant commerce clause

Next came four court decisions in 1981-1984 involving the District of Columbia and counties in Maryland. *Browning-Ferris v. Anne Arundel Cty., Md.*[30] invalidated a county ordinance barring the disposal in and transportation through the county of various hazardous wastes[31] not originating in the county. The court found the ordinance indistinguishable from the state law struck down in *City of Philadelphia.*[32]

Shayne Bros., Inc. v. Prince Georges Cty., Md.[33] held violative of the dormant commerce clause a county ordinance banning transport of trash from outside the state to a dumpsite within the county, unless permission was granted by the county. (Permission had been denied). *City of Philadelphia* was again found dispositive. The county's argument that the ban was crucial in light of the imminent exhaustion of existing landfills was handily dismissed, as the same argument had been in *City of Philadelphia*, and for the same reason: a county is free to limit the amount of refuse going into its dumps, but cannot in the process discriminate against out-of-state refuse purely on the basis of origin.[34]

The remaining cases in this group of four, *County Commissioners of Charles County, Md. v. Stevens*[35] and *Shayne Bros. v. District of Columbia*,[36] both raised the precise issue reserved in *City of Philadelphia* -- again, whether a state or local waste import ban limited to government-owned dumpsites can stand.[37] Both answered in the affirmative. *Charles County* found a county ban entitled to market participant immunity and hence valid, since it merely limited the benefits of the county-owned landfill to the county taxpayers who funded it.[38] Important to finding the county not a market regulator was the fact that its ban did not restrict the disposal of waste collected outside the county in any *private* landfill that might someday be constructed in the county, nor did the county possess unique access to potential landfill sites. Relying heavily on this decision, *District of Columbia* applied the market participant exemption to sustain a District ban on disposal of imported solid waste at District-operated landfills without its prior permission.

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[30] 292 Md. 136, 438 A.2d 269 (1981).

[31] For purposes of the dormant commerce clause, it seems to make no difference whether the solid waste restriction applies to hazardous waste, nonhazardous waste, or both.

[32] Another part of the ordinance, requiring that all persons seeking to transport hazardous wastes through the county have on file with the county an application and a license issued by the county, was struck down despite its evenhanded application to in-county and out-of-county waste. Invalidation was grounded on an inquiry, required under the dormant commerce clause, as to whether the benefits obtained through the contested regulation could have been brought about in some other way involving less burden on interstate commerce. The court found that under state and federal laws already in existence, the county could obtain all the information as to hazardous waste shipments within its borders that it needed.

[33] 556 F. Supp. 182 (D. Md. 1983).

[34] *Shayne Bros.* also spoke to the Supreme Court's reservation in *City of Philadelphia* of the issue of waste import bans limited to government-owned dumpsites. That reservation, it said, did not avail the county here since the county ban was not limited to state-owned resources. It apparently made no difference to the court that the only authorized dumpsites in the county at the time were state-owned.

[35] 299 Md. 203, 473 A.2d 12 (Md. Ct. App. 1984).

[36] 592 F. Supp. 1128 (D.D.C. 1984).

Finally, *Charles County* instructs that whatever the extent of any exception to the market participant rule for hoarding of state-owned natural resources, such a "natural resource exception" did not apply to the Charles County landfill. Complex facilities like landfills, it said, simply are not natural resources. Nor did the County appear to be hoarding land suitable for such landfills. (Another waste-import ban decision asserted in dicta that when a county has neither refused access to all its landfills nor forbidden the transportation of out-of-county waste across its borders, no "hoarding" has occurred for dormant commerce clause purposes.[39])

Since the Maryland/D.C. cases, only two waste-ban decisions have come down: one squarely in the mainstream of cases, the other quite novel.

The mainstream decision is *LeFrancois v. Rhode Island,*[40] facing again the *Charles County/District of Columbia* issue -- whether the market participant exemption applies when a state formally bars disposal of outside waste only at state-owned or -operated landfills, but no private landfill is available elsewhere in the state for out-of-state waste. As in those decisions, the court here upheld the prohibition notwithstanding that the state-owned landfill was the only one in the state. The market participant exemption applied, said the court, because the state sought to restrict only the ability of out-of-state refuse haulers to discharge at the state-owned landfill, not the ability of private parties to construct new landfills open to all waste regardless of origin. Indeed, four landfill license applications were then pending before the state. The court cautioned, however, that constitutional problems might still arise in more extreme circumstances -- that is, on facts like those in *LeFrancois* with the exception that the state, either overtly or indirectly, *precluded* the siting of new private landfills.

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[37] *Charles County* and *Browning-Ferris* make explicit what other waste import ban cases merely assume -- that the dormant commerce clause limitations apply with equal force to all laws affecting interstate commerce, whether at the state, county, or municipal level. 473 A.2d at 14 (*Charles County*), 438 A.2d at 271 n.4 (*Browning-Ferris*). *See also* Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960).

[38] One may well ask, of course, why the fact of taxpayer funding could not be fully accommodated by simply charging more for disposal of out-of-county waste, in place of the more drastic measure of prohibiting it altogether.

[39] Waste Aid Systems, Inc. v. Citrus County, Fla., 613 F. Supp. 102, 107 n.2 (M.D. Fla. 1985).

[40] 669 F. Supp. 1204 (D.R.I. 1987).

The novel decision is that in *Evergreen Waste Systems, Inc. v. Metropolitan Service District*.[41] At issue was a District ban on disposal of waste generated outside the District's three-county solid waste planning area in the District-operated landfill. Because the ban applied to only one of the state's many landfills, and banned waste from most *within*-state counties along with out-of-state waste, the court declined to view the ban as a facial discrimination against interstate commerce,[42] hence found inapplicable the *per se* rule of unconstitutionality invoked in *City of Philadelphia*. Applying instead the other, balancing-type approach, the court found that the District's ordinance (a) regulated evenhandedly in treating out-of-state waste the same as *most* within-state waste, and (b) imposed only incidental burden on interstate commerce relative to the substantial local benefit derived (buying time for the District to site a new landfill). Hence the ordinance was sustained.[43]

Evergreen runs counter to both *Duchess Sanitation Service* and *Browning-Ferris*, discussed on pages 7-8. *These* cases found local waste-import bans to be *per se* commerce clause violations despite the fact that in each instance the ban, like that in *Evergreen*, extended to most waste from within the state (but from outside the ban-imposing jurisdiction). More importantly, *Evergreen* flies in the face of a prior Supreme Court ruling. In *Dean Milk Co. v. City of Madison*,[44] the Court held that a Madison, Wisconsin ordinance limiting the sale of milk not processed within five miles of the city could withstand commerce clause attack only if reasonable nondiscriminatory alternatives were unavailable -- this despite its conceded objective of protecting public health and safety. Critically here, the Court noted: "It is immaterial that Wisconsin milk from outside the Madison area is subjected to the same proscription as that moving in interstate commerce."[45] In light of *Dean Milk*, the validity of the *Evergreen* holding, based as it is on a more lenient dormant commerce clause standard, must be seen as doubtful.

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[41] 820 F.2d 1482 (9th Cir. 1987).

[42] *See* text accompanying note 6 *supra*.

[43] In the opinion below, the district court held that even if the District's ordinance failed the balancing test, it would still be valid, since the District was a market participant. Evergreen Waste Systems, Inc. v. Metropolitan Serv. Dist., 643 F. Supp. 127, 131 (D. Ore. 1986).

[44] 340 U.S. 349 (1951).

[45] *Id.* at 354 n.4.

Reciprocity Requirements

Many of the waste import bans in the previous section were not absolute, but rather had bypass mechanisms -- for example, obtaining prior permission for a shipment from the receiving jurisdiction. With reciprocity requirements, the waste import ban can be bypassed by an agreement between the receiving and sending states that each will accept the other's waste on the same terms, or by some other arrangement through which the receiving state ensures comparable waste management standards in the sending state. Notwithstanding this equal-treatment aspect, interstate-waste reciprocity arrangements have met with mixed success under the dormant commerce clause. Outside the solid waste field, barriers to interstate trade based on reciprocity have been resoundingly rejected by the Supreme Court.

First came *Great Atlantic & Pacific Tea Co. v. Cottrell,*[46] striking down a Mississippi rule that milk from another state could be sold in Mississippi only if the sending state entered into a reciprocity agreement that it would accept Mississippi milk. Though not an absolute bar to bringing in out-of-state milk, the Mississippi requirement in this case had the same practical effect (there being no agreement with the sending state). Only state interests "of substantial importance," the Court declared, could save the Mississippi rule. The only such interest put forward, however -- public health -- was easily rebuffed, since the rule allowed reciprocity agreements setting lower standards for milk shipments between producers of the two states than applied to milk produced in Mississippi for within-state consumption.

Another argument by Mississippi, that its reciprocity rule enabled it to assure itself that the other state's health standards are the substantial equivalent of its own, was (assuming it to be true) also dismissed. There are means to serve this interest, said the Court, that are far less burdensome on commerce than the Mississippi rule. "Mississippi has the obvious alternative of applying its own standards of inspection to shipments of milk from a non-reciprocating state."[47]

Two subsequent reciprocity decisions of the Supreme Court have yielded the same disapproving result. *Sporhase v. Nebraska*[48] struck down a Nebraska law blocking transfer of groundwater out of state unless the receiving state allowed transfer of its water to Nebraska on similar terms. *New Energy Co. v. Limbach*[49] invalidated an Ohio statute awarding a sales tax credit for ethanol gas sold by dealers, if produced in Ohio or a state according similar tax treatment. The fact that non-reciprocity resulted only in economic disadvantage to out-of-state sellers, rather than an absolute import prohibition, was deemed immaterial. At the same time, however, the Court explained that in narrow circumstances, reciprocity arrangements might be sustained.[60]

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[46] 424 U.S. 366 (1976).

[47] *Id.* at 377.

[48] 458 U.S. 941, 957-958 (1982).

[49] 100 L. Ed. 2d 302 (1988).

Most significant here, *Cottrell* has been applied to interstate waste. In *Hardage v. Atkins*,[61] the court voided an Oklahoma state law barring shipment into Oklahoma of industrial wastes, unless the state of origin (1) had similar standards for industrial waste disposal, and (2) had entered into a reciprocity agreement with Oklahoma. The instant case was indistinguishable from *Cottrell*, said the court -- noting, in its one sentence of analysis, that "[e]ven if Texas had higher standards than Oklahoma for the disposal of controlled industrial waste, such waste could not be shipped into Oklahoma unless Texas entered into a reciprocal agreement."[62] In a subsequent decision, the court clarified that it had intended earlier to strike down not only the reciprocity agreement provision in the Oklahoma statute, but the similar-standards feature as well.[63] Both offended the dormant commerce clause.

Another, quite recent decision holds to the contrary, but is arguably wrongly decided and is now on appeal. In *National Solid Wastes Management Ass'n v. Alabama*,[64] the court upheld against dormant commerce clause challenge a state statute barring commercial hazardous waste treatment or disposal facilities within the state from accepting hazardous waste generated in any state that either --

> (a) prohibits the treatment or disposal of hazardous waste within that state, or
>
> (b) has no hazardous waste facility within the state, unless the state has entered into an agreement for disposal of hazardous wastes pursuant to the federal Superfund Act's capacity assurance "requirement," and Alabama is a party to that agreement.

The large volume of waste going to the massive Chemical Waste Management facility in Emelle, Alabama--particularly from cleanups at Superfund sites--reportedly prompted the challenged legislation.

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[60] *Id.* at 310

[61] 582 F.2d 1264 (10th Cir. 1978).

[62] *Id.* at 1266.

[63] Hardage v. Atkins, 619 F.2d 871 (10th Cir. 1980).

[64] Civ. No. 89-G-17220W (N.D. Ala. Jan. 12, 1990).

The court's opinion opens with a lengthy recitation of federal-law provisions encouraging state involvement in hazardous and non-hazardous waste management, in particular the stipulation that states not assuring adequate capacity for handling their hazardous wastes become ineligible after October 1989, for federally conducted remedial actions under the Superfund Act.[55] Alabama asserted that it had dutifully shouldered its waste management duties under these laws, including the waste assurance "requirement," and would therefore no longer tolerate wastes from less responsible states.

In rejecting the dormant commerce clause attack, the court makes several errors. Most notably, it applies the balancing test enunciated by the Supreme Court for non-facially discriminatory statutes, rather than the stricter scrutiny used for facial discriminations. Alabama's law is plainly an instance of the latter. Further, the court fails to inquire whether some measure less burdensome of interstate commerce might serve the asserted public safety interests -- for example, a ceiling on the amount of waste *of whatever origin* that might be disposed of within the state. Finally, the court appears unaware of the considerable body of Supreme Court case law disapproving reciprocity arrangements under the commerce clause. In requiring states seeking to send waste into Alabama to do what Alabama has done, Alabama's statute arguably states, in essence, a reciprocity demand.

Despite its flaws, *National Solid Waste Management Ass'n* is an important decision. It is the only one in the field to address what effect the broad spectrum of federal solid waste legislation has on a state's ability to constrict waste import. Though the court stopped short of saying that such legislation, particularly the capacity assurance "requirement" in Superfund, amounted to a congressional immunization from commerce clause attack, it nonetheless felt that such laws provided direct encouragement for Alabama's legislation. Under a proper reading of the cases, however, the fact that Alabama may have been motivated by a desire to bring its sister states more in line with federal policy should not have materially affected the commerce clause analysis.

In sum, all but one of the foregoing cases regard reciprocity and related "similar standards" requirements as facially discriminatory legislation warranting strict scrutiny, and invalidation, under the dormant commerce clause. For this reason, these decisions suggest poor prospects for future reciprocity provisions adopted by states and localities to control solid waste import.

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[55] Comprehensive Environmental Response, Compensation and Liability Act § 104(c)(9), 42 U.S.C. § 9604(c)(9).

Discriminatory Fees

Case law outside the solid waste area reveals that the dormant-commerce-clause analysis of discriminatory *fees* proceeds along the same lines as that of *outright barriers* to interstate trade. Recently, a Third Circuit decision suggested that the same parallelism exists in the solid waste realm.

Swin Resource Systems, Inc. v. Lycoming County (Pa.)[56] arose from Lycoming County's decision, in running its own landfill, to charge more for the disposal of waste generated outside the county or nearby counties than for waste generated inside that area.[57] The court found the county's fee system shielded by the market participant exemption. The rule of *South Central Timber*[58] created no problem, it concluded, since the county was a market participant in the same market (waste disposal) as that to which the challenged fee system applied.

Swin also gave extended treatment to the claim that the market participant exemption is inapplicable when a state seeks to hoard a natural resource, as (the argument runs) by banning imported waste from state-owned landfills. In contrast with a manufactured product, it has been observed, a state cannot obtain natural resources if it has not been naturally favored with them and a more fortunate state refuses to sell. Presumably for this reason, the Supreme Court has hinted on several occasions that there may be limits on a state's ability to invoke the market participant exemption to hoard resources that *by happenstance* are found there.[59] However, the court here did not have to settle the status of this "natural resource exception" to the market participant exemption, since preserving government-owned landfills for local use was not seen to be hoarding a natural resource:

> [Here] a state subdivision has used initiative to build a waste disposal facility to serve its needs. Further, given Lycoming's recycling program, one could say ... that the continuing availability of [the landfill] is not simply happenstance .... This is not a case in which a state has hoarded a resource like coal or oil that is geologically peculiar to that state ....

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[56] 883 F.2d 245 (3rd Cir. 1989).

[57] The County's rates were $10 per ton for waste generated within the county, $13.25 per ton for waste from the nearby counties, and $30 per ton for other waste.

[58] Page 5 *supra*.

[59] *See, e.g.*, Reeves, Inc. v. Stake, 447 U.S. 429, 443-444 (1980); Sporhase v. Nebraska, 458 U.S. 941, 957 (1982); South-Central Timber Development, Inc. v. Wunnicke, 467 U.S. 82, 96 (1984).

Thus, two decisions, this one and *County Commissioners of Charles County, Md. v. Stevens*,[60] have rejected efforts to deny applicability of the market participant exemption to government-owned solid waste disposal sites.

Related Court Decisions

A few cases dealing with state bans similar to those above should be mentioned in passing. The first grappled with a waste *export* ban, requiring all solid waste collected in the state to be disposed of at state facilities.[61] The court found no undue interference with interstate commerce in solid waste, since plaintiff failed to show that the law imposed significant burdens on out-of-state economic interests without redeeming state benefits. Quite arguably, however, the court applied too lenient a test. As an overt discrimination against interstate commerce, the waste export ban here would seem to come under the strict scrutiny standard, not the balancing test used for facially neutral state actions having only incidental impact on interstate commerce.

At issue in another case was a county requirement clearly less intrusive on interstate trade than an import or export ban. Under this requirement, most waste generated in the county had to be deposited at a designated transfer station, for processing and transport to an out-of-county disposal site. The transfer station operation, including the cost of disposal elsewhere, was financed by "tipping fees" paid by the haulers who deposited waste there. The court found no dormant commerce clause infirmity in this scheme. It was not deemed a *per se* violation of the doctrine because it was not shown to be economically protectionist, either by purpose or effect. Nor did it fail the alternative, balancing test used in dormant commerce clause analysis, since plaintiff showed no burden on interstate commerce resulting from mandatory disposal at the transfer station and the local benefits of the requirement were seen to be substantial.

Finally, two other cases struck down state bans on in-state storage of *radioactive* waste generated out of state. In the first,[62] a Washington statute closing the borders of the state to low-level radioactive waste originating outside the state was unable to withstand the strict scrutiny accorded measures that facially discriminate against interstate commerce, and was held ineligible for the market participant or quarantine exceptions to dormant commerce clause strictures. In the second case,[63] an Illinois statute banning the disposal in-state of spent nuclear fuel from outside the state was also found to violate the dormant commerce clause. This decision is notable for its discussion of why the quarantine cases do not support waste import bans.

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[60] See pages 8-9.

[61] Harvey & Harvey, Inc. v. Delaware Solid Waste Auth., 600 F. Supp. 1369 (D. Del. 1985). *City of Philadelphia* makes clear that the dormant commerce clause applies as forcefully to state efforts to keep an article of commerce inside a state as it does to efforts to keep articles outside a state. 437 U.S. at 628.

[62] Washington State Building and Construction Trades Council v. Spellman, 684 F.2d 627 (9th Cir. 1982), *cert. denied*, 461 U.S. 913 (1983).

Each of the two radioactive waste decisions above found the ban in question impermissible as well under the supremacy clause of the U.S. Constitution,[64] owing to conflicts with the regulatory scheme created under the federal Atomic Energy Act.

OTHER CONSTITUTIONAL ISSUES

Equal Protection

As applied to economic regulation, the equal protection clause[65] demands only that when a state law treats one class of persons or activities different than another (*e.g.*, inter- versus intrastate commerce in waste), the legislature "rationally could have believed" that the statutory classification would promote a legitimate governmental objective.[66] Whether the statutory classification is *objectively* likely to achieve this objective is immaterial.[67] Quite plainly, this is a highly deferential standard, giving states wide discretion in the regulation of their economies.

As significant, most court decisions to date have accepted economic protectionism goals, anathema in commerce clause law, as a "legitimate governmental objective" for purposes of equal protection. Thus, the fact that a discrimination against out-of-state waste is rooted in the jurisdiction's desire to preserve its landfill capacity for its own citizens, has so far not been regarded by courts as inconsistent with equal protection. Unable to challenge the jurisdiction's isolationist motivation, equal protection challengers have met with no success in the reported cases.

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[63] State of Illinois v. General Elec. Co., 683 F.2d 206 (7th Cir. 1982), *cert. denied*, 461 U.S. 913 (1983).

[64] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land ...." U.S. Const. Art. VI, cl. 2.

[65] "[N]or [shall any state] deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. It is well established that a corporation is a "person" within the meaning of this provision. *See, e.g.*, Western & Southern Life Ins. Co. v. State Board, 451 U.S. 648, 660 n.12 (1981).

[66] Western & Southern Life Ins. Co. v. State Board, 451 U.S. 648, 672 (1981). A far more demanding equal-protection test, applying "strict scrutiny" to government classifications, is employed when the classification discriminates against "suspect classes" (such as those based on race or ancestry) or impinges on "fundamental interests" (such as the right to procreate, or the right to vote). Neither suspect classes nor fundamental interests would appear to be involved in discriminations against out-of-jurisdiction solid waste. *See, e.g.*, Hancock Industries v. Schaeffer, 811 F.2d 225, 237 (3d Cir. 1987).

[67] *Id.*

In *Waste Aid Systems, Inc. v. Citrus County., Fla.*,[68] involving a county ban on the use of the county-owned landfill for out-of-county waste, the district court determined that the equal-protection test above was satisfied. The ban's purposes -- ensuring landfill availability to county residents, avoiding roadside litter, etc. -- were legitimate public goals, and the county rationally could have believed that the classification in question -- accepting in-county waste, barring out-of-county waste -- would promote the aforementioned goals.

The U.S. Court of Appeals for the Third Circuit has rejected equal protection attacks on two occasions -- the first involving a waste import ban; the second, discriminatory fees. In the first, *Hancock Industries v. Schaeffer*,[69] the court rebuffed the argument of the waste-hauler plaintiffs that even granted that preservation of the county's landfill capacity was a legitimate purpose for equal protection purposes, that purpose was not in fact the county's true purpose. The court must assume, it said, that stated governmental objectives are actual objectives, unless circumstances overwhelmingly suggest otherwise -- an evidentiary burden not met by the plaintiffs here. Moreover, the county's exclusionary policy was obviously rationally related to the capacity-preserving objective.[70]

In *Swin Resource Systems, Inc. v. Lycoming County* (Pa.),[71] the Third Circuit readily rejected an equal protection challenge to county fees charging three times as much per ton of waste disposed when the waste originated outside the near-county region. The asserted purpose of this scheme was to extend the useful life of the county's landfill. The court repeated its assertion in *Hancock* that it is a legitimate government objective *in the equal protection context* for a county to provide for the continued disposal of trash generated by citizens of that county. "Countless cases have held that caring for local or regional needs is a legitimate purpose of local government."[72] Thus, on finding a rational link between the challenged fee system and landfill longevity, the court put the equal protection issue to rest.

Though all three equal protection attacks in this area have failed, states and counties should not become complacent. To be sure, the "rational basis" test customarily applied in equal protection attacks on economic legislation is a very lax one. Still, the Supreme Court seems to be ambivalent on whether the presence of an in-state/out-of-state discrimination in a local promotion scheme is of relevance in equal protection law. The equal protection cases above clearly indicate that discrimination solely on the basis of the waste's place of origin is irrelevant. In 1985, however, the Court found violative of equal protection an Alabama tax scheme whereby out-of-state insurance companies doing business in the state were taxed at a rate much higher than domestic insurance companies. Said the Court in *Metropolitan Life Insurance Co. v. Ward*: "We hold that under the circumstances of this case, promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose."[73]

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[68] 613 F. Supp. 102 (M.D. Fla. 1985).

[69] 811 F.2d 225 (3d Cir. 1987).

[70] Curiously, plaintiffs in *Hancock Industries* did not appear to press a dormant commerce clause attack.

[71] 883 F.2d 245, 255-256 (3d Cir. 1989).

[72] *Id.* at 256.

Metropolitan Life received no mention in any of the three equal protection decisions above, though seemingly of relevance. One can only surmise that it was seen by these courts as aberrational, or at least limited to the insurance context that gave rise to it. Another possible view, however, is that because the Court had been blocked by Congress from scrutinizing the discriminatory legislation before it under the dormant commerce clause,[74] the Court had only the equal protection clause with which to strike down the tax scheme. It thus felt compelled, runs this argument, to import a nondiscrimination requisite from the dormant commerce clause into equal protection. If this view is correct, it could mean that federal enactments seeking to shield state and local discriminations against outside waste from commerce clause challenge do not leave states and localities entirely free of constitutional concerns.

Due Process

The due process clause proscribes the governmental deprivation of "life, liberty, *or property*" without due process of law.[75] A due process challenge to a state/local restriction on waste import would contend that some property right of plaintiff was destroyed without due notice and opportunity to be heard (procedural due process) or without plausibly advancing a legitimate governmental objective (substantive due process).

As with equal protection, the two reported due process attacks in this area have failed. In both instances, plaintiff trash haulers were unable to show that their expectations of being allowed to continue hauling out-of-county waste to a county-owned landfill amounted to a "property" interest cognizable under the due process clause. In one case, the "property" argument was defeated by the absence of long-term contracts between the haulers and defendant solid waste authorities, and the absence of statutes guaranteeing plaintiffs the right to dump.[76] In the other, the court rejected the argument that state-law restrictions on the county's ability to legislate gave rise to legitimized expectations on the part of plaintiff trash hauler that amounted to property.[77] (In addition, plaintiff had received sufficient notice and opportunity to be heard during the county's deliberations on whether to adopt the ban.)

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[73] 470 U.S. 869, 882.

[74] The McCarran-Ferguson Act exempts the insurance industry from dormant commerce clause restrictions. 470 U.S. at 880.

[75] U.S. Const. Amend. XIV, § 1 (emphasis added).

Impairment of Contract

The Constitution prohibits any state from passing any "Law impairing the Obligation of Contracts."[78] This proscription is pertinent here, since long-term contracts between municipalities, waste haulers, and landfills are common and may be undermined by state and local[79] adoption of measures to exclude outside waste.

Research discloses no reported court decisions grappling with impairment of contract issues in the solid waste context. Based on Supreme Court construction of the impairment clause, however, a few things can be said. First, state actions furthering the common welfare of their citizens are rarely struck down on impairment grounds, despite the absolute wording of the clause.[80] There are certainly arguments to be made that a discrimination against solid waste import does indeed further the common welfare of the enacting jurisdiction, even if at the expense of outsiders. Secondly, a higher level of judicial scrutiny may be applied when government impairs a contract to which it is itself a party -- namely, whether the impairment is "necessary" and "reasonable" to serve an important public purpose. Such a circumstance might arise, for example, where a municipality's adoption of a waste import ban dictates its breach of a contract by which the municipality agreed to accept imported waste at its own landfill for a specified period of years. Still, a properly justified ban would seem able to meet the "necessary" and "reasonable" tests, though the matter is not free from doubt.

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[76] Hancock Industries v. Schaeffer, 619 F. Supp. 322 (E.D. Pa. 1985), *aff'd*, 811 F.2d 225 (3d Cir. 1987).

[77] Waste Aid Systems, Inc. v. Citrus Cty., Fla., 613 F. Supp. 102 (M.D. Fla. 1985).

[78] U.S. Const. Art. I, § 10.

[79] The impairment of contracts clause, though applicable by literal terms only to states, has been held to extend as well to municipal ordinances. *See, e.g.*, Cuyahoga Power Co. v. City of Akron, 240 U.S. 462 (1916).

[80] The prevailing doctrine is that the clause "does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal ... though contracts previously entered into between individuals may thereby be affected." Manigault v. Springs, 199 U.S. 473, 480 (1905). Or, as the Court stated decades later: "the reservation of the reasonable exercise of the protective power of the States is read into all contracts." Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398, 444 (1934).

CONGRESS AND THE CONSTITUTION

Commerce Clause

As noted at the start, the commerce clause poses no serious restraint on current congressional initiatives seeking to allow greater state and local control over the import of solid waste for disposal purposes.

Relevant bills in the 101st Congress take either of two basic approaches. In the first, Congress would prohibit the transport into a state, for purposes of disposal, of anything more than a *de minimis* quantity of solid waste, unless the receiving state (or political subdivision) consented.[81] Under this model, it would be *Congress*, rather than the states, which prohibits the interstate commerce; the states act only to *lift* the prohibition. This approach is plainly within the commerce power. For Congress' part, its power under the commerce clause to "regulate" interstate commerce has been held sufficiently broad to allow it to impose outright prohibitions of commerce. Moreover, Congress, in sharp contrast to the states, labors under no restriction against burdening interstate commerce.[82] As for the states, they act under this approach only to *remove barriers* on interstate commerce, not to erect them, and thus seem beyond the balkanization concern underlying the dormant commerce clause.

The second approach, followed by a roughly equal number of bills, is the reverse of the first. This tack consists of Congress' authorizing the *states themselves* to impose the waste import bans (though in some bills only when the state has a federally approved solid waste management plan or has entered into an interstate waste-disposal compact).[83] Here, too, both federal and state actions satisfy the commerce clause. The Supreme Court has long sustained Congress' power under the commerce clause to authorize states to burden interstate commerce in ways that would be impermissible for states to attempt lacking congressional authorization. Said the Court recently: "When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause."[84] Congressional drafters should bear in mind, however, that Congress' intent to approve discriminatory state legislation "must be unmistakably clear" for the covered state laws to withstand dormant commerce clause attack.[85]

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[81] *See, e.g.*, H.R. 1995 (Congressman Watkins), H.R. 2099 (Congressman Richardson), H.R. 3264 (Congressman McDade), H.R. 3577 (Congressman Burton), S. 269 (Senator Riegle).

In a slight variation, H.R. 3268 (Congressman Olin) and S. 1754 (Senator Heinz) would prohibit the disposal of solid waste in a state other than in accordance with an EPA-approved solid waste management plan.

[82] As the Supreme Court stated in Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 429-430 (1946):

> The power of Congress over commerce exercised entirely without reference to coordinated action of the States is not restricted, except as the Constitution expressly provides, by any limitation which forbids it to discriminate against interstate commerce and in favor of local trade. Its plenary scope enables Congress not only to promote but also to prohibit interstate commerce, as it has done frequently and for a great variety of reasons.

[83] *See, e.g.*, H.R. 2723 (Congressman Kanjorski); H.R. 2967 (Congressman Bonior), H.R. 3268 (Congressman Olin); H.R. 3395 (Congressman Erdreich); S. 1921 (Senator Coats).

Congressional authorization of state regulation or outright bans takes a seat alongside the market participant exemption as a second method by which states and localities can burden the interstate waste flow without running afoul of the commerce clause.

Other Constitutional Issues

As with state regulation, the congressional solid waste initiatives discussed above are unlikely to be struck down on equal protection, due process, or impairment of contract grounds. Indeed, the federal government operates under even looser constraint against impairment of contracts than do the states.[86]

Recall, however, Congress' power to immunize state actions from dormant commerce clause attack, historically derived from Congress' plenary power over interstate commerce. In striking contrast, there appears to be no basis for inferring a similar power of congressional immunization in connection with equal protection, due process, or impairment of contract challenges to state legislation. As a result, suits against state waste-import restrictions based on *these* constitutional provisions could seemingly be tried on the merits even if Congress had enacted an authorization of such restrictions aimed at blunting commerce-clause attack.[87] Pending bills in the Congress purporting to authorize state burdens on waste import do not expressly cite any constitutional provision, but should be understood in this light nonetheless.

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[84] Northeast Bancorp. v. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985). To similar effect, the Court stated elsewhere that "Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce." White v. Massachusetts Council of Construction Employers, 460 U.S. 204, 213 (1983).

[85] South-Central Timber Development, Inc. v. Wunnicke, 467 U.S. 82, 90 (1984). *See also* Sporhase v. Nebraska, 458 U.S. 941, 960 (1982) (Congress' intent to immunize state law must be "expressly stated.").

[86] Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 733 (1984).

[87] *See, e.g.*, Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 880-881 (1985), where a federal statute authorizing states to impose taxes that burden interstate commerce in the insurance field was held not to preclude equal protection challenge to such state enactments. To be sure, however, Congress had not attempted in this instance to immunize the state from equal protection scrutiny.

In a sense, then, there is from Congress' vantage point both bad news and good news. The bad news is that Congress' power to insulate state law from constitutional attack appears limited (among the constitutional issues discussed here) to the dormant commerce clause. The good news is that based on cases to date, dormant commerce clause actions against state initiatives are the only ones likely to succeed.

CONCLUSION

A relatively harmonious body of interstate-waste case law has emerged since *City of Philadelphia v. New Jersey*. These cases adopt a straightforward application of dormant commerce clause principles and the market participant exemption. Overt discrimination by a state or local jurisdiction against waste originating outside the jurisdiction is constitutionally infirm when applied to both publicly and privately owned disposal sites. If the state discrimination is limited to government-owned disposal sites, however, it will probably be sustained, owing to the market participant exemption.

In the context of interstate movement of solid waste, the market participant exemption is clearly a gaping hole in the commerce clause's barrier to state action. As noted, 80% of landfills are reported to be state or locally owned. Nonetheless, the remaining 20% of landfills that are in private ownership, plus the many *hazardous waste* disposal facilities in the private sector, mean that there remains an incentive for states and localities to continue their attempts at circumvention of commerce clause restrictions. The Court, as noted, has endorsed nondiscriminatory limitations on landfill intake should a state seek to extend the lifetime of its landfills. This, of course, will not be economically acceptable to all, since it means at least some of the local jurisdiction's trash haulers will incur the added expense of transport to distant disposal sites. The bill, naturally, is picked up by taxpayers.

Still, it is difficult to see what other avenues exist. *Evergreen Waste Systems* teaches that a lenient balancing test applies when a smaller-than-statewide jurisdiction bans import of all waste from outside the jurisdiction, but the decision is outside the mainstream of dormant commerce clause law.

More importantly, the possibility has been mentioned that even without enactment of any of the bills now pending, states might include waste import restrictions in their solid waste management plans, adopted under Resource Conservation and Recovery Act (RCRA) subtitle D,[88] or as part of their Superfund Act capacity assurance plan.[89] One might then argue that congressional authorization has been granted the state, with resultant commerce clause immunity, through EPA approval of either plan. Some have predicted that this argument may figure prominently in the next "wave" of litigation involving state interstate-waste restrictions, as to which *National Solid Wastes Management Ass'n v. Alabama* is the harbinger. The courts would be unlikely to buy such an argument, however, owing to the complete silence of RCRA and the Superfund Act as to any congressional intent to confer dormant commerce clause immunity, and the firm judicial requirement that such intent be clearly stated.

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[88] 42 U.S.C. §§ 6941-6949a.

[89] 42 U.S.C. § 9604(c)(9). See discussion at page 13.

Congressional enactment of a ban on interstate shipment of solid waste coupled with provision for state waivers, or authorization for state-imposed bans, remains a constitutionally clean solution -- at least as regards the dormant commerce clause of the Constitution. Such approaches, however, raise policy issues beyond the scope of this report.

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July 12, 1990

To : Senate Environment and Public Works Committee
Attention : Cliff Rothenstein

From : James E. McCarthy, JM Mark E. Anthony Reisch, and Gwen Davis GD
Environment and Natural Resources Policy Division

Subject : Interstate Shipment of Municipal Solid Waste

This memorandum responds to your request for information concerning the interstate shipment of municipal solid waste (MSW). You asked us how much waste is being shipped across State lines for disposal, which States export and import, and to what extent the exports represent long-haul transport versus short-distance shipment across borders to the nearest disposal site.

In general, this information is hard to obtain. To obtain what we did, we undertook a telephone survey of approximately 40 States that are either large producers of municipal waste, are known to have shortages of disposal capacity, or have been identified as potential sites of large new landfills.

This memo first presents some general conclusions, then provides State-by-State information from those States we were able to contact.

SUMMARY

At least eleven conclusions can be drawn from the telephone survey we conducted.

1) Data on interstate shipment of waste are of uneven quality. Some States have good data; others have none at all. Thus, we don't really know with precision how much waste is crossing State lines.

2) Even where there are reporting requirements, the measurements are likely to be imprecise, since many landfills and transfer stations measure waste in volume terms (cubic yards), whereas others measure tonnage. Converting volume data to tons requires use of an average conversion factor, which could be inaccurate. If waste is baled, for example, its density may be 3 to 4 times as great as waste from compactor trucks. Using average conversion factors when such large differences are known to occur introduces considerable uncertainty.

3) Nevertheless, despite the above limitations which argue for a potentially wide margin of error, CRS estimates, based on this survey of exporters and importers, that more than 12,000,000 tons of municipal solid waste (about 7 percent of the estimated U.S. total generated) crossed State lines in 1989 for disposal.

4) Waste generators ship waste across State lines for at least three reasons:

> a) in many cases, major cities are located near a State border, and the closest disposal facility may be across the line. This has been the case for part or all of the waste from many metropolitan areas, including New York, Philadelphia, Washington, Chicago, St. Louis, Kansas City, and El Paso;
>
> b) in other cases, there is a "temporary" shortage of disposal capacity in the generating State. Such shortages are generally tied to a strengthening of landfill standards, the closing of old dumps, an inability to site new facilities, and dramatic increases in the tipping fees charged by the remaining local landfills. New York and New Jersey are two examples of this set of circumstances. Such shortages are not expected to be permanent, but it may be several years before they are eliminated in any given State; and finally,
>
> c) there is a long-term trend toward larger, regional disposal capacity that is affecting both intrastate and interstate shipment of waste. For example, in the Pacific Northwest, there are several large regional facilities being built which will attract long-haul waste from both in and out-of-State. In California, there are also proposals for long-haul transport of waste, in this case, entirely within State.

5) Many of the exporting States also receive waste, or have received large amounts in the past. New Jersey is the best historical example: the State long provided waste disposal for New York and Philadelphia area waste, but now exports. Pennsylvania is perhaps the best current example: according to State officials, the State imported 3.4 million tons in 1989, while exporting 1.5 million.

6) States that are currently net importers have, in many cases, responded to the "threat" of imports by tightening their solid waste management planning process, much as New Jersey did in the early 1980s. This may result in their becoming net exporters themselves in the future as they implement more stringent standards, close older landfills, and fragment their States into planning districts responsible for maintaining their own disposal capacity.

7) One of the reasons that interstate shipment of waste has become such a volatile issue is a sense that the prime beneficiaries of long-haul

transport are, in general, private haulers and landfill owners and operators whose windfall provides little benefit to the population of the receiving area. On the other hand, in some cases, host communities do reap benefits from accepting out-of-State or out-of-area waste (including host community fees and cheaper or free disposal). Thus, not all receiving areas support restrictions on such shipments.

8) Several States mentioned that within-State import/export (from one county or community to another) is as important a problem as interstate shipment. To the receiving community, it does not matter whether the waste is coming from Chicago or New Jersey, or a city 50 miles away. The point is, it is coming from somewhere else. Unless the community senses a benefit from receiving the waste, it is likely to be opposed.

9) Waste crosses State lines for recycling as well as disposal. These flows are becoming increasingly common as the amount of household waste separated for recycling grows and as the variety of potential arrangements for processing of recyclables expands. No State provided separate data on exports or imports for recycling, which is generally not tracked.

10) Proposed solutions to the problem of interstate waste shipment need to take account of the variety of existing arrangements for waste disposal and recycling and the future needs of States, which may change rapidly. A complete ban on interstate waste shipment would affect about 30 exporting States and probably hundreds of local jurisdictions, many of which may have difficulty finding alternative disposal capacity.

11) There are more data for interstate shipment of hazardous waste than for municipal solid waste, although these data also "have major limitations," according to EPA. The data show that about 3.6 million tons of hazardous waste were shipped across State lines for disposal in 1987. Every State exports hazardous waste, according to EPA, and all but 8 rural States also import hazardous waste for treatment or disposal.[1] In general, States do not have the capacity to treat or dispose all of the types of hazardous waste generated within their borders.

STATE-BY-STATE

The following sections provide more detailed information for each State that we contacted.

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[1] U.S. Environmental Protection Agency, Office of Solid Waste, "State Capacity Assurance Plans Under CERCLA Section 104(c)(9)," February 1990, p. 40. Data are for the year 1987.

Alabama

Since 1988, owners of sanitary landfills in Alabama have been required to report the disposal of out-of-State municipal waste. From July through December 1989, two landfills received a total of approximately 27,000 tons of waste from Georgia. As a result of a recent court battle, another site has been given approval to accept imported waste. Some of the municipal waste is expected to come from New Jersey. Landfills not designated as "sanitary" are not required to report these shipments. No records are kept on waste exported from the State.[2]

Arkansas

A moratorium has recently been imposed on the receipt of out-of-State waste by Arkansas' landfills. However, one landfill has a new contract to receive waste from New Jersey and New York at a projected rate of 250 tons per day or 75,000 tons per year. According to disposal fee records, 100,000 tons per year had been shipped across State lines from Missouri prior to the moratorium. That represented five percent of the total municipal waste disposed in Arkansas.

Very little waste is exported from the State. Counties near Mississippi may send 6,000 to 10,000 tons per year to landfills just across the border.[3]

California

A spring 1989 survey of county waste management plans and county waste coordinators provides good data on exports. California sends 73,000 tons per year of sewage sludge to Arizona. Another 50,000 tons per year of mixed municipal waste is exported to Nevada. California receives no municipal waste from out-of-State.[4]

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[2] Telephone interview, Lindsey Mothershed, Chief, Special Waste Unit, Land Division, Alabama Department of Environmental Management, June 1990.

[3] Telephone interview, David Werling, Planning and Grants Manager, Solid Waste Division, Arkansas Department of Pollution Control and Ecology, June 1990.

[4] Telephone interview, Michael Leaon, Associate Waste Management Specialist, California Waste Management Board, June 1990.

Colorado

Colorado reports that no municipal solid waste is exported from or imported to the State.[5]

Connecticut

Records of exports and imports are sketchy here. According to a landfill report, from 1985-86, 35,000 tons per year of waste were sent from Stratford, CT, to Massachusetts for incineration and recovery. Today, the rate may have reached 40,000 tons per year. Currently, an unknown amount is exported to a Waste Management, Inc. landfill across the New York State line. In addition, incinerator ash residue is sent from a Stamford site, which burns 70,000 tons of waste per year, to other States, including Ohio and Kentucky.[6]

Delaware

Delaware reported that no municipal solid waste is exported from or imported to the State.[7]

District of Columbia

Municipal waste is transported from the District to two landfills in Virginia.[8] The largest of these, at Lorton, Virginia, accepts about 700,000 tons per year from the District, which has no landfill within its borders.

Florida

Records have not been kept on the transportation of waste across Florida's borders. There is, however, evidence of waste being imported from its neighbors, including Louisiana and Mississippi.[9]

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[5] Telephone interview, Paul Paulsen, Engineer, Solid Waste Program, Colorado Department of Health, June 1990.

[6] Telephone interview, Tom Pregmen, Supervising Environmental Analyst, Solid Waste Program, Connecticut Department of Environmental Protection, June 1990.

[7] Telephone interview, June Peacock, Executive Assistant, Delaware Department of Natural Resources and Environment Control, June 1990.

[8] Telephone interview, Barbara Matthews, Solid Waste Disposal Division, District of Columbia Department of Public Works, June 1990.

[9] Telephone interview, John Reese, Engineer, Solid Waste Division, Florida Department of Environmental Regulation, June 1990.

Georgia

No disposal site in the State has a permit to import waste. However, a small city on Georgia's western border has a contract with Waste Management, Inc. to send its municipal waste to Alabama. Probably less than 200 tons per day are exported.[10]

Idaho

Idaho has no data on municipal waste exports or imports, but an EPA draft report states that Lewiston, Idaho, exports an unknown quantity of waste to Washington.[11] While disposal capacity in the State has generally been adequate, there is some concern about the future. Idaho's two largest counties (Ada and Canyon) have banned disposal of out-of-county waste.[12]

Illinois

According to the State EPA's annual report, which is based on quarterly reports from disposal facility operators, Illinois imported about 1.6 million tons of MSW in 1989. This figure was derived by subtracting an estimate based on per capita waste generation from the 14.2 million tons that was reported as managed. Little more is known of the State's imports and exports, although it is estimated that 40 percent of Chicago's residential waste is disposed in other States, and most of St. Louis's waste is brought into Illinois. Of the 14.2 million tons handled, 13.1 million tons (92 percent) was landfilled, 0.85 million tons (6 percent) was recycled, and 0.29 million tons (2 percent) was incinerated.

There are 126 landfills in the State, a decline of 7 from 2 years ago, and 40 more are scheduled to close within the next 3 years. More than two-thirds of them are privately owned. There are about 6 years of "gross landfill capacity" remaining.

Locally, 29 of the State's 102 counties have no landfill, and 37 will be without a landfill in 3 years. Half the counties export at least 50 percent of their waste to other counties or States; several of them are major importers of landfilled waste. Counties with more than 100,000 population are required by law to have solid waste plans by March 1991, and the others by March

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[10] Telephone interview, Harold Gillespy, Unit Coordinator, Permit Review Unit for Solid Waste Program, Georgia Department of Natural Resources, June 1990.

[11] U.S. EPA, Region 10, "Analysis of the Policy Implications of Regional MSW Disposal," State Review Draft, June 4, 1990, Table 1.

[12] Telephone interview, Doug Benzon, Transportation Economist, Idaho Department of Transporation, July 11, 1990.

1995. The plans must provide for recycling rates of 25 percent, and siting of new facilities. Nevertheless, uncontrolled imports of waste may make a solid waste plan ineffective.[13]

Indiana

A conservative estimate is that 5,000 tons per day is imported, much of it from the East Coast (New York, New Jersey, Pennsylvania). Some also comes from surrounding States, notably from the Chicago area. Tipping fees are low in the State, averaging about $25/ton.

A recently enacted law, House Enrolled Act 1240, requires that districts within the State develop 20-year solid waste management plans. The law, which goes into effect on Janury 1, 1991, also provides for increased recycling, and pollution prevention. Monthly reports from all landfills will provide data on imports, among other things.

One provision of the statute allows landfills to charge a "differential" on imported waste. The differential is an amount which would make the Indiana tipping fee equal to that of the closest landfill to the point of origin of the MSW. The differential fees collected go into a special State fund to clean up polluted sites. This provision is being challenged in Federal court.[14]

Iowa

There are no data. It is thought that a little bit goes across the border in both directions from and to border communities.[15]

Kansas

There are no import/export data. All 105 counties have landfills, and it is thought that little is exported. A "fair amount" is imported from Kansas City, Missouri, but otherwise very little. In 1988, sanitary landfills in the State received 1,577,868 tons plus 4,361,283 cubic yards of MSW (landfills can report on either a tonnage or cubic yardage basis). The landfills are mostly privately owned.[16]

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[13] Telephone interview, Janet Hawes, Division of Land Pollution Control, Illinois Environmental Protection Agency, June 14, 1990. Michael F. Nechvatal. *Solid Waste Imports/Exports in Illinois* [fact sheet]. Illinois Environmental Protection Agency, n.d.

[14] Telephone interview, T.J. Knots, Branch Chief, Solid and Hazardous Waste Management, Indiana Department of Environmental Management, June 22, 1990.

[15] Telephone interview, Rob Ribbins, Waste Management Division, Iowa Department of Water, Air, and Waste Management, June 15, 1990.

Louisiana

There are no data. Some MSW goes to Mississippi. It is thought that none is imported.[17]

Maine

In 1988, the State imported 100,923 tons of MSW, about three-fourths from Massachusetts, and about one-fourth from New Hampshire. In the same year, Maine exported 6,860 tons, mainly to New Hampshire from towns along the border. The total amount generated in the State was 877,350 tons.

The import data are from a biannual report to the legislature, and the export data are from a solid waste capacity needs report.[18]

Maryland

There are no data on imports and exports, but indications are that they are about even. The State is pretty self-sufficient regarding MSW. Imports are mainly land-clearing debris and rubble, primarily from the Northeast. Most landfills are owned by county or city governments. Some contract with private firms to run the facilities.[19]

Massachusetts

The State's "rough estimate" is that 300,000 - 600,000 tons of MSW is imported annually, primarily from Rhode Island, and 200,000 - 400,000 tons is exported, primarily to New Hampshire. Also, about 1,000 tons per day of demolition debris is sent to Maine.[20]

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[16] Telephone interview, Bob Kinder, Bureau of Waste Management, Kansas Department of Health and Environment, June 21, 1990.

[17] Telephone interview, Jim Brent, Solid Waste Division, Department of Environmental Quality, June 26, 1990.

[18] Telephone interview, Cliff Eliason, Solid Waste Bureau, Maine Department of Environmental Protection, June 14, 1990.

[19] Telephone interview, John Lawther, Chief of the Solid Waste Division, Maryland Department of the Environment, June 20, 1990.

[20] Telephone interview, Gerry Lambert, Division of Solid Waste, Massachusetts Department of Environmental Quality, June 19, 1990.

Michigan

There are no data on exports or imports of municipal waste, but the State might have some by the end of the year from updated county plans. The State generates 32,000 tons per day of MSW.[21]

Minnesota

Not much waste moves in or out of Minnesota, according to State officials. There is some exchange of waste with Iowa and the Dakotas, mostly leaving Minnesota, but the volumes are relatively small. Minnesota tends to have tougher environmental regulations, particularly when compared to the Dakotas, so waste would be unlikely to be imported from there. The State may receive some inflow from Wisconsin, but again the volumes would be relatively small.[22]

Missouri

Missouri's two largest cities, St. Louis and Kansas City, are both located on the border, with significant portions of their metropolitan areas in Illinois and Kansas, respectively. As a result, there has traditionally been movement of waste across the border in both directions. Many communities also ship waste across the border in rural areas, to and from Arkansas and Iowa.

The latest figures the State has indicate that 15 percent of St. Louis's waste is being disposed in Illinois. In 1987, however, the State was exporting 1.5 million tons per year (about 25 percent of the State's total municipal waste), 1.1 million from the St. Louis area and 400,000 from Kansas City. Illinois and Kansas officials both report substantial inflows from Missouri.

Despite being an exporter, several facilities in the State have expressed interest in importing long-haul waste. One of these, in Grundy County, is already accepting 230 cubic yards a day from New York. The waste comes in by train to Iowa and then is trucked across the border. Three other sites have asked permission to accept long-haul waste.

The State official with whom we spoke stressed that waste hauling in Missouri is a very dynamic situation, with daily or weekly changes in amounts moving back and forth. To take a snapshot would be misleading, he suggested. It would appear that there is a great deal of activity, involving both import and export, and both short and long hauls.[23]

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[21] Telephone interview, Bob Lameer, Waste Management Division, Michigan Department of Natural Resources, June 14, 1990.

[22] Telephone interview with Lanny Peissig, Minnesota Pollution Control Agency, July 2, 1990.

Montana

The only waste imported to Montana comes short distances from communities near the border. For example, some Yellowstone Park waste comes into the State on a seasonal basis. There is probably some waste exported short distances as well, but the State has no available data. In 1989, the State legislature passed a two-year ban on waste importation (with exceptions for ongoing activities), in response to proposals for long-haul imports.[24]

New Hampshire

New Hampshire is a net importer of waste, having imported 312,050 tons in 1989, while exporting 108,745. Imports come mostly from commercial haulers in Maine, Massachusetts, Rhode Island, and Vermont, with Massacusetts accounting for 79 percent of the total. Exports go to at least eight different facilities in three of the same States (Maine, Massacusetts, and Vermont), with Massachusetts receiving 61 percent. Data for 1986 and 1987 indicate that the levels of imports and exports have remained relatively constant, even though many of the shipments are not covered by long-term contracts.[25]

New Jersey

New Jersey appears to be the largest net exporter of municipal solid waste currently, but for many years was a net importer of waste, from the Philadelphia and New York metropolitan areas. The State's attempt to ban waste imports in the 1970s led to a landmark Supreme Court case, City of Philadelphia v. New Jersey, in which the Court held that interstate shipment of waste is entitled to protection under the commerce clause of the Constitution.[26]

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[23] Telephone interviews, Jim Hull, Chief, Solid Waste Section, Missouri Department of Natural Resources, June 14, 1990 and July 31, 1989.

[24] Telephone interview, Roger Thorkilson, Montana Department of Health and Environmental Sciences, June 14, 1990.

[25] Telephone interview, June 14, 1990, and subsequent data provided by Sharon Yergeau, Administrator, Waste Management Planning Bureau, New Hampshire Department Of Environmental Services.

[26] 437 U.S. 617 (1978).

In 1989, New Jersey disposed of 8.3 million tons of municipal solid waste, 3.8 million of which (46 percent) were disposed out-of-State. Both the amount disposed and the amount shipped out-of-State declined slightly in 1989 as compared to the previous year: waste disposal declined 7 percent, waste exports 3 percent.[27] The State believes that most of the exports are destined for Pennsylvania, a point confirmed by Pennsylvania data, but like most other States with whom we spoke, New Jersey does not attempt to identify the disposal location for waste that leaves the State.

New Mexico

The State of New Mexico imports about 365,000 tons per year of municipal solid waste from El Paso, Texas, which is located just across the New Mexico border. The waste goes to two landfills, one privately owned and one public.

Because of a 1989 proposal to develop nearly 40 square miles of the State into a landfill that would accept long-haul waste, the State had a moratorium on new landfills for about a year, during which time the legislature passed strict new standards and permit requirements. The moratorium was lifted in the spring of this year, but the proposed project (at Lordsburg) has not gone forward.

The State exports about 80 percent of its hazardous waste. In addition, in the 1988-89 reporting year, the State generated 800,000 square feet of asbestos waste, of which 504,000 were exported for disposal, chiefly to Texas. There is no export of municipal solid waste of which the State is aware, however.[28]

New York

New York generated an estimated 21 million tons of municipal solid waste in 1989, of which 11.3 percent (about 2.4 million tons) was disposed out-of-State. Ohio received 36 percent of the exports, Pennsylvania 29 percent, and other States (unspecified) 35 percent.

Exports from New York quadrupled between 1987 and 1989, a period in which 73 of the State's 278 landfills closed, while only one new landfill opened. At the same time, and perhaps more important, New York City's Fresh Kills Landfill, the country's largest, increased its tipping fee from $18.50

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[27] Telephone interview, Gilbert Mueller, Supervising Planner, Division of Solid Waste Management, New Jersey Department of Environmental Protection, June 14, 1990.

[28] Telephone interview, David Duran, Program Manager, Solid Waste Permitting and Compliance Section, New Mexico Health and Environment Department, July 12, 1990.

to $40.00 per cubic yard, driving most private haulers to seek disposal in other States. According to press reports, as much as 10,000 tons per day of waste were diverted from Fresh Kills to landfills in other States as a result of the fee increase. The city, having lost $100 million in revenues from the diversion, is now in the process of lowering tip fees to $25 per cubic yard; the new rate would apply if recyclable material has been removed from the garbage prior to disposal.[29]

The State is not aware of any significant waste imports.[30]

Nevada

The only major interstate shipment of municipal waste to or from Nevada involves the South Lake Tahoe area, where as much as 700 tons per day comes into the State from California. It is difficult to annualize this figure because of seasonal variation, but California estimates the amount at 50,000 tons per year. Besides the Lake Tahoe area, the State is aware of at least three towns situated on the State border where small amounts of waste cross the border and travel short distances either into or out of the State.[31]

North Dakota

North Dakota imports about 240 tons per day of municipal waste, mostly from Minnesota. The waste goes to three landfills, in Fargo, Grand Forks, and Gwinner, at least one of which is municipally owned. (Both Fargo and Grand Forks are located just across the border from Minnesota.) Besides this activity, there is an active proposal to dispose of up to 400 tons per day of incinerator ash from the Minneapolis area in North Dakota, and at least one privately-owned landfill in North Dakota wants to increase the amount of municipal waste it accepts from out-of-State. Finally, the State is host to a medical waste incinerator that brings in waste from as far away as New Jersey and Georgia.

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[29] "Lower Fees Are Voted for Fresh Kills," New York Times, June 27, 1990, p. B3.

[30] New York data came from a June 1990 report by Sen. Nicholas A. Spano, Vice Chairman, Legislative Commission on Solid Waste Management, "Solid Waste Exportation: New York's Road to Nowhere," and were supplemented by a telephone interview with Tom Lynch, New York Department of Environmental Conservation, June 15, 1990.

[31] Telephone interview, John West, Environmental Management Specialist, Nevada Division of Environmental Protection, June 15, 1990.

There is also some waste export from the State: about 20 tons per day goes from Ellendale, N.D. about 40 miles to a landfill in Aberdeen, S.D.[32]

Ohio

Ohio is probably the largest net importer of waste at the present time. The State imported 2,882,133 tons in 1988, according to official figures.[33] This amount is about the same as Pennsylvania imported, but exports from Ohio (for which there are no official data) are probably lower than Pennsylvania's.

Imports represented 17 percent of the waste disposed in the State during 1988. According to the State report that summarized 1988 data, "In general, Ohio facilities that dispose of out-of-state waste do not accept wastes hauled from long distances. Instead, in numerous cases, the accepted waste simply crosses adjacent state borders."[34]

Besides waste imported from the East, large amounts of waste move in both directions along the Ohio River, according to the State official most familiar with the data. Michigan, Indiana, Kentucky, and West Virginia also ship waste into Ohio, according to the State.

Preliminary figures for 1989, still being revised, indicate imports may have totaled 3.7 million tons in that year, although shipments may not have increased as much as the tonnage figures would indicate, because of higher densities. The Ohio official with whom we spoke noted that it can skew the data to report waste in tons, since most of the State's big landfills don't have scales. Thus, the data must be converted using an artificial conversion factor. The State generally uses a factor of 3 cubic yards per ton, but waste density can vary substantially, both above and below that figure. In particular, baled waste may have a density of 1 cubic yard per ton. Thus, if a higher percentage came into the State as baled waste, the number of shipments and the capacity used by out-of-State waste would not necessarily have increased.[35]

Oregon

Oregon currently imports and exports solid waste on a small scale, but the State (indeed, the Pacific Northwest region) appears to be in transition to a system of large regional landfills serving long-haul intra- and interstate shipments. At present, according to the State, it is not uncommon for waste to move between Oregon and Washington, and Oregon and Nevada. The volumes are relatively small: for example, 8,800 tons per year goes from Clatsop County, Oregon, to a privately owned landfill in Pacific County, Washington. Clark and Skamania Counties in Washington send waste to an incinerator and landfill in Oregon, but again the volumes are not believed to be large.

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[32] Telephone interview, Steven Tillotsin, Coordinator, Solid Waste Program, North Dakota Department of Health, July 11, 1990.

[33] Ohio EPA, "Ohio Solid Waste Facility Data, 1988," p. 9.

[34] Ibid.

[35] Telephone interview with George Kaiser, Ohio Environmental Protection Agency, July 2, 1989.

Oregon, however, has two new landfill projects (one open and the other expected to open shortly) that will add 100,000,000 tons of disposal capacity. Both the Seattle area and some California counties have expressed interest in using these facilities.[36]

Pennsylvania

Pennsylvania appears to be the second largest importer of waste, according to the survey, but the State also exports substantial amounts. In 1989, the State imported more than 3.4 million tons of municipal solid waste, of which 2,549,000 came from New Jersey, 684,000 from New York, and 236,000 from Maryland. Unspecified lesser amounts came from Connecticut, Delaware, Virginia, the District of Columbia, and other States. Landfills in the State submit quarterly reports on waste received, disaggregated by county or State of origin. As a result, data on waste imports for the State are good.

Data on waste exports are not reported, but the State estimates about 1.5 million tons leave the State destined for Ohio, West Virginia, Kentucky, and Virginia. Most waste exports are generated by a capacity shortage in the eastern part of the State, which has caused long-haul transport of waste within the State as well as exports. In addition, border counties in western Pennsylvania have exported waste for many years.[37]

Rhode Island

Reports on the transportation of waste to and from Rhode Island are uncertain. Although no sites have been granted a permit to receive out-of-State waste, one landfill has just begun to accept an unknown amount.

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[36] Telephone interview with Ernie Schmidt, Senior Environmental Engineer, Oregon Department of Environmental Quality, June 14, 1990. Supplemental information was provided by U.S. EPA Region 10, which made available a review draft of "Analysis of the Policy Implications of Regional MSW Disposal," dated June 4, 1990.

[37] Telephone interview, Sam Sloan, Chief, Planning Section, Division of Waste Minimization and Planning, Pennsylvania Department of Environmental Resources, July 2, 1990.

No records are maintained on the export of municipal waste; however, some estimates of the amount can be deduced from recent reports on the disposal of in-State waste at a large Rhode Island landfill. When the disposal fee was raised there, the amount of waste received from in-State sources dropped from 4,000 tons per day to 2,700 tons per day. Handlers of municipal waste must have found it cheaper to transport the waste out-of-State.[38] According to the Rhode Island Solid Waste Management Corporation, an average 1,000 tons per day of commercial nonhazardous waste was exported to Massachusettes in May 1990. The Rhode Island landfill has now lowered its fees and expects a decline in exports as in-State disposal becomes relatively cheaper once again.

Texas

No records on the landfilling of municipal waste are maintained. While there is probably not much long distance hauling, some border towns regularly move waste across State lines. For example, the landfill for the city of Texarkana is located in Arkansas.[39] According to New Mexico officials, the city of El Paso, Texas, also located on the border, ships at least 1,000 tons per day of waste to two landfills in New Mexico.

Utah

According to State officials, municipal waste import and export is not a common practice in Utah. Most areas of the State have adequate disposal capacity. There may be some cross-border movement, in either direction, but there are no available data. Legislation enacted in 1990 (S.B. 255) requires that facilities have permits and requires the approval of both the Governor and the Legislature to import out-of-State waste. As a result, out-of-State waste is not likely to be a problem for the State in the immediate future.[40]

Vermont

Of the 250 towns in Vermont, 48 (19 percent) export solid waste, primarily to New Hampshire. The State estimates that 15-20 percent of the State's waste is exported. Some of this waste travels short distances across the border, but there are also hauls of about 100 miles from three counties in the southwestern portion of the State, where an incinerator ceased operation about three years ago. There are also hauls of equally long distance within the State. There is little waste importation. Three to five New Hampshire towns were disposing of waste in the northeastern part of the State, but the official with whom we spoke was not sure whether this arrangement has continued.[41]

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[38] Telephone interview, Chris Schaeffer, Engineer, Solid Waste Group, Rhode Island Department of Environmental Management, June 1990.

[39] Telephone interview, Glendenn Epler, Division of Solid Waste Management, Texas Department of Health, June 1990.

[40] Telephone interview, Phil Burns, Environmental Health Scientist, Bureau of Solid and Hazardous Waste, Utah Division of Environmental Health, July 11, 1990.

Virginia

Most landfills in Virginia do not accept out-of-county municipal waste; however, an unreported amount is received by four to five commercial landfills from Maryland, North Carolina, and Pennsylvania. In addition, the District of Columbia disposes of virtually all of its waste (estimated at 700,000 tons per year) at a landfill situated on federally-owned land at Lorton, Virginia. Very little municipal waste is exported.[42]

Washington

Washington exports small amounts of waste to Oregon and imports small amounts from Oregon and Idaho, according to a draft report from EPA Region 10.[43] More importantly, Washington has three proposed regional landfills that together would have a lifetime capacity of 200 million tons of solid waste, more than 50 times the State's annual generation of MSW.

Despite these in-State proposals, the King County (Seattle) area has been actively pursuing disposal options in Oregon. Oregon officials expect that 500-1,000 tons per day of Seattle area waste will be shipped to Oregon.[44]

West Virginia

Thirty percent of the municipal waste disposed in landfills in West Virginia comes from out-of-State. That is approximately 600,000 tons per year coming from Ohio, Pennsylvania, New York, and New Jersey. Only minimal amounts may be exported, according to the State.[45]

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[41] Telephone interview, Bryan Heckenberger, Solid Waste Division, Vermont Department of Environmental Conservation, July 12, 1990.

[42] Telephone interview, Linda Lightfoot, Assistant Director of Field Operations, Virginia Department of Waste Management, June 1990.

[43] U.S. EPA, Region 10, "Analysis of the Policy Implications of Regional MSW Disposal," State Review Draft, June 4, 1990, Table 1.

[44] Telephone interview, Ernie Schmidt, Oregon Department of Environmental Quality, June 14, 1990.

[45] Telephone interview, Charles Kapet, Administrative Assistant, Solid Waste Division, West Virginia Department of Natural Resources, June 1990.

Wisconsin

Beginning January 1991, the transport of municipal waste across Wisconsin's borders must be reported. At present, there is no reporting requirement. According to a recent local newspaper investigation, however, an estimated 500,000 tons per year are currently imported, and 20,000 to 30,000 tons per year exported to Iowa, Minnesota, and Michigan.[46]

Wyoming

Wyoming has no hard data on waste imports or exports, but there is very little current activity, according to the State. Nevertheless, there have been a number of serious proposals to import waste by rail from both the West and East. At least two proposals have been discussed to build landfills with capacities of 5,000 or more tons per day. The State currently has no landfill larger than 500 tons per day, and has adopted a permit moratorium on landfills designed to accept more than that amount. The State also has enacted a $10 per ton fee that would apply to landfills accepting more than 500 tons per day. The permit moratorium is temporary, and will be lifted (perhaps within a few months) when the State promulgates new permit regulations. At that time, the State expects renewed interest, and permit applications, for large facilities.[47]

We hope this information is useful. If we can be of further assistance, please call Jim McCarthy at 7-7225 or Mark Reisch at 7-7255.

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[46] Telephone interview, Lakshmi Sridharan, Chief, Solid Waste Management Section, Wisconsin Department of Natural Resources, June 1990.

[47] Telephone interview, Rob Gronewold, District 1 Supervisor, Solid Waste Program, Wyoming Department of Environmental Quality, July 11, 1990.

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